

TABLE OF CONTENTS

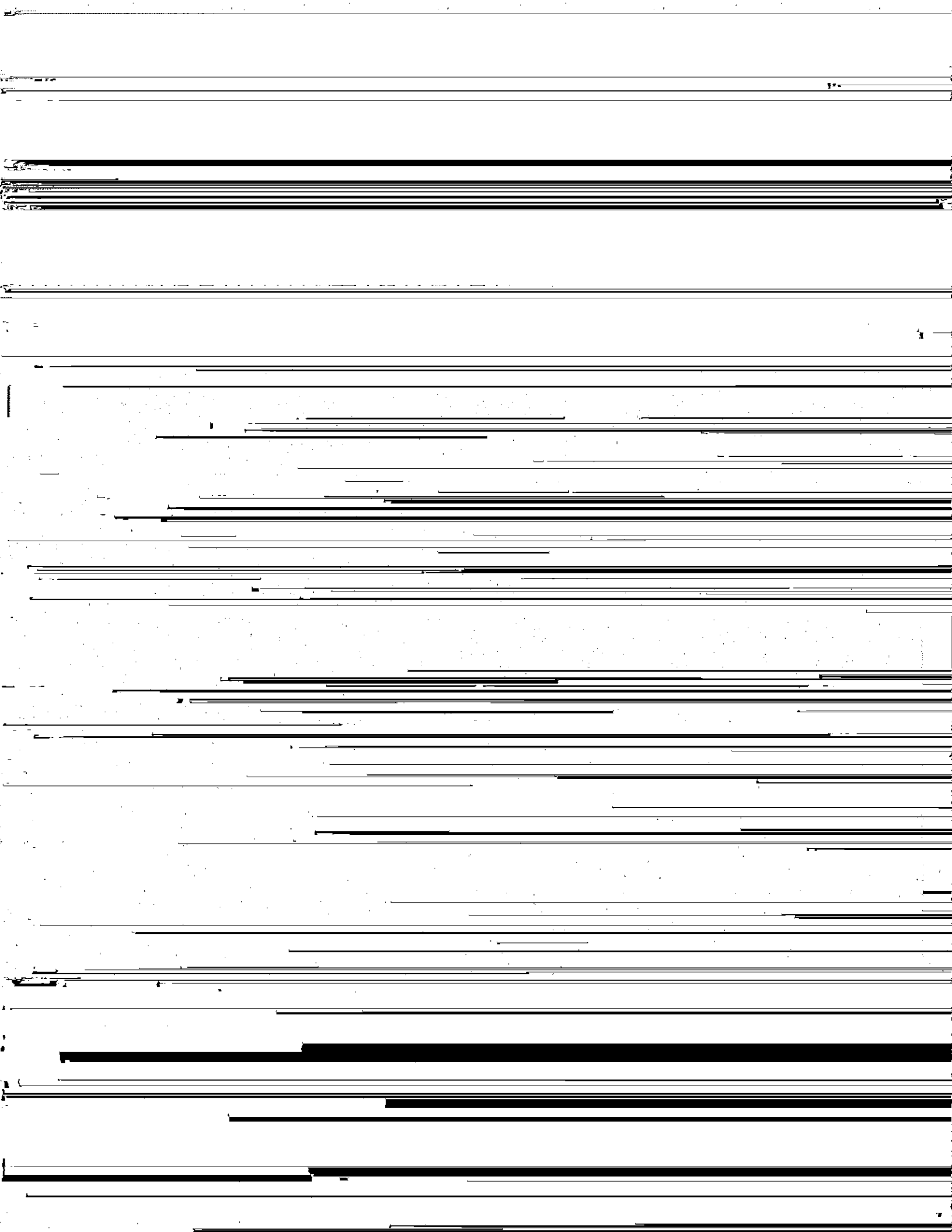
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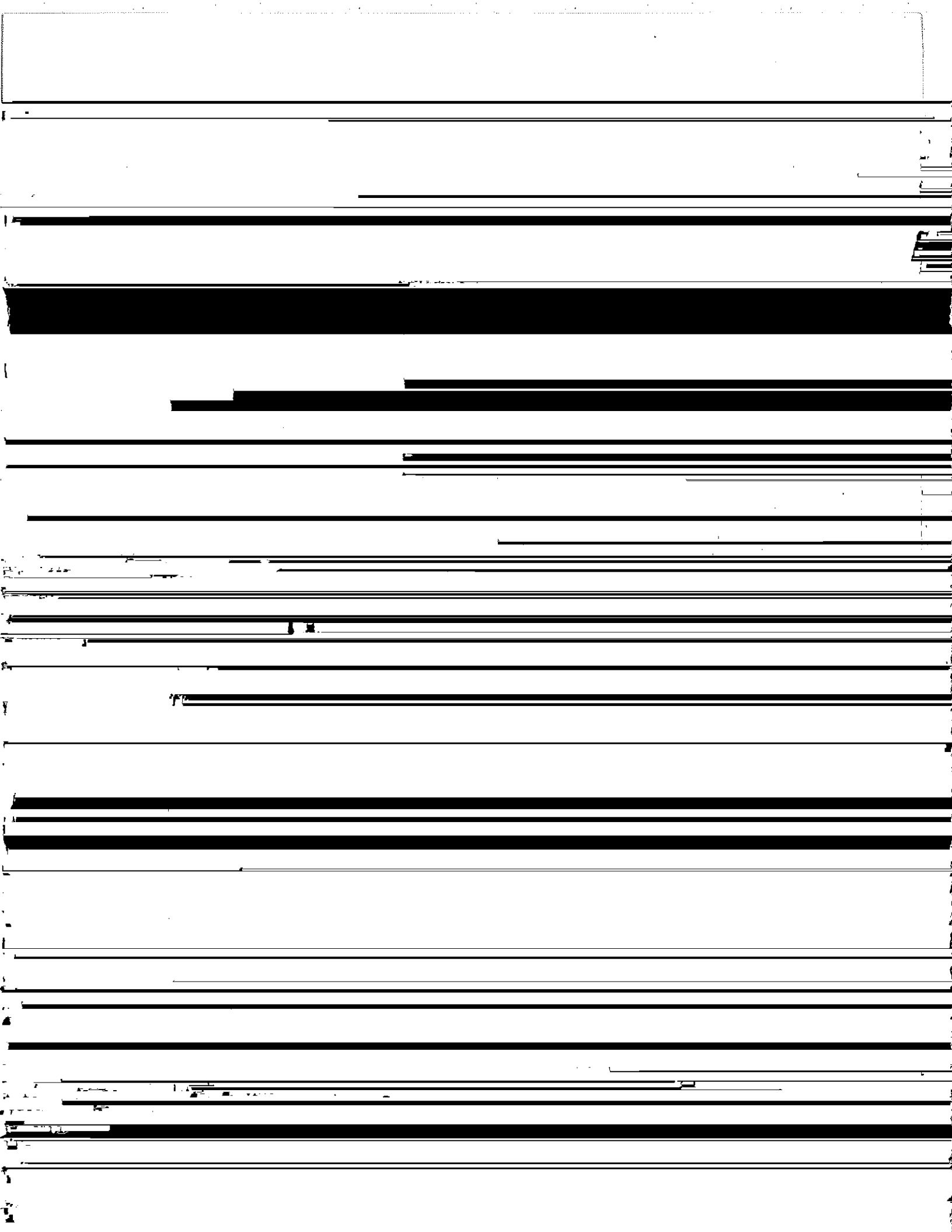
VOLUME TWO: THE CONSTITUTION











supported by one or two provincial Premiers argued the case for what has come to be called the "nation-building" perspective. Viewed through this lens, Canada is more than a loosely knit collection of provincial communities. The ties that bind Canadians should be protected and strengthened.



The Prime Minister was supported only by the Premiers of Ontario and

Manitoba. The other Premiers had been in his confidence since the beginning of the

By May 1981 events reached a climax. The Newfoundland Supreme Court of



disciplined manner. The system has been severely tested but in the last

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PART ONE

CHAPTER I

CONTENDING CONSTITUTIONAL OPTIONS IN QUEBEC

INTRODUCTION

On November 1, 1970, the Parti Québécois was created.

opposition and put itself clearly on top. This position was held well past the start of the official referendum campaign on April 15, 1980. However, by the mid-point of the campaign, the federalist forces had come from

[REDACTED]

[REDACTED]

[REDACTED]

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a common tariff policy towards other countries), the free circulation of people (subject to special agreements on the operation of the labour market), a common currency (the Canadian dollar) and free circulation of capital (subject to investment codes or "particular regulations applicable to certain financial institutions").

The treaty of association would also set up four major institutions: a community council to administer the tasks required by the treaty, a commission of experts to advise the council, a court of justice to decide disputes and, a monetary authority to oversee the working of a central bank. The court of justice would have an equal number of judges from both Quebec and Canada. Representation on the monetary authority would be proportional to the relative weight of each economy. The formula for representation on the community council was not specified but all

paper rejected an elected parliamentary assembly for the association.

Chapter 5 ("The Referendum") described the stages which would lead to

In sum, the White Paper elaborated somewhat on the resolutions of the PQ convention in June 1979. A significant difference was its retreat from the principle of parity in all community institutions as shown by its provision for equal representation on the monetary authority by its



### Reaction from Outside Quebec

#### Ottawa

The Liberals and the NDP were quick to agree that the White Paper confirmed sovereignty-association as independence by another name. They criticized Prime Minister Clark's policy of limiting federal government participation in the referendum and to urge him to take a stand.

The Liberals attacked the White Paper most strongly. Jean Chrétien argued "it's a war and it must be won" (Le Devoir, November 2, 1979, p. 1). Trudeau complained that the paper was full of historical fallacies and that the PQ had been more cunning than lucid or honest. Trudeau agreed that in the event of a OUI vote, the procedure of negotiation proposed in the White Paper should be followed because the democratic expression of the will of the citizens must be respected. However, he criticized the White Paper for not saying what would happen if Canada refused the type of association suggested by the White Paper, or if the vote was NON.

Prime Minister Joe Clark argued that the treaty of association suggested in the White Paper was unacceptable and incompatible with the



1979; Winnipeg Tribune, November 10, 1979; Vancouver Sun, November 8, 1979; St. John's Evening Telegram, November 11, 1979). While it was felt that the White Paper clarified the issue of "what Quebec wants", it was also concluded that, in doing so, the White Paper made it easier to see that sovereignty-association meant the break-up of Canada. The White Paper was criticized as a biased account of Confederation. The assumption that the

OUI vote in the referendum was considered unwarranted. The failure to say what would happen if the vote were NON or if the rest of Canada refused to

On these terms do you give the government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?

YES

THE QUEBEC LIBERAL PARTY'S PAPER ON CONSTITUTIONAL REFORM:  
"A NEW CANADIAN FEDERATION", JANUARY 10, 1980

[REDACTED]

[REDACTED]

[REDACTED]

lined its alternative to sovereignty-association by fleshing out its con-  
cept of "reformed federalism". This means a return to the

[REDACTED]

[REDACTED]

FL

[REDACTED]

71 Division of Business

[REDACTED]

[REDACTED]

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[REDACTED]

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culture and education natural resources agriculture health and social





the four Atlantic provinces, and two of the four western provinces including one of the two most heavily populated provinces in each of these regions. This formula was modelled on the earlier "Victoria" formula approved unanimously at a First Ministers' Conference on the Constitution in June, 1971 at Victoria, BC.

#### Reaction in Quebec to the Beige Paper

The Beige Paper was the most fully elaborated federalist constitutional proposal ever to have come from Quebec, and it had been eagerly awaited. To

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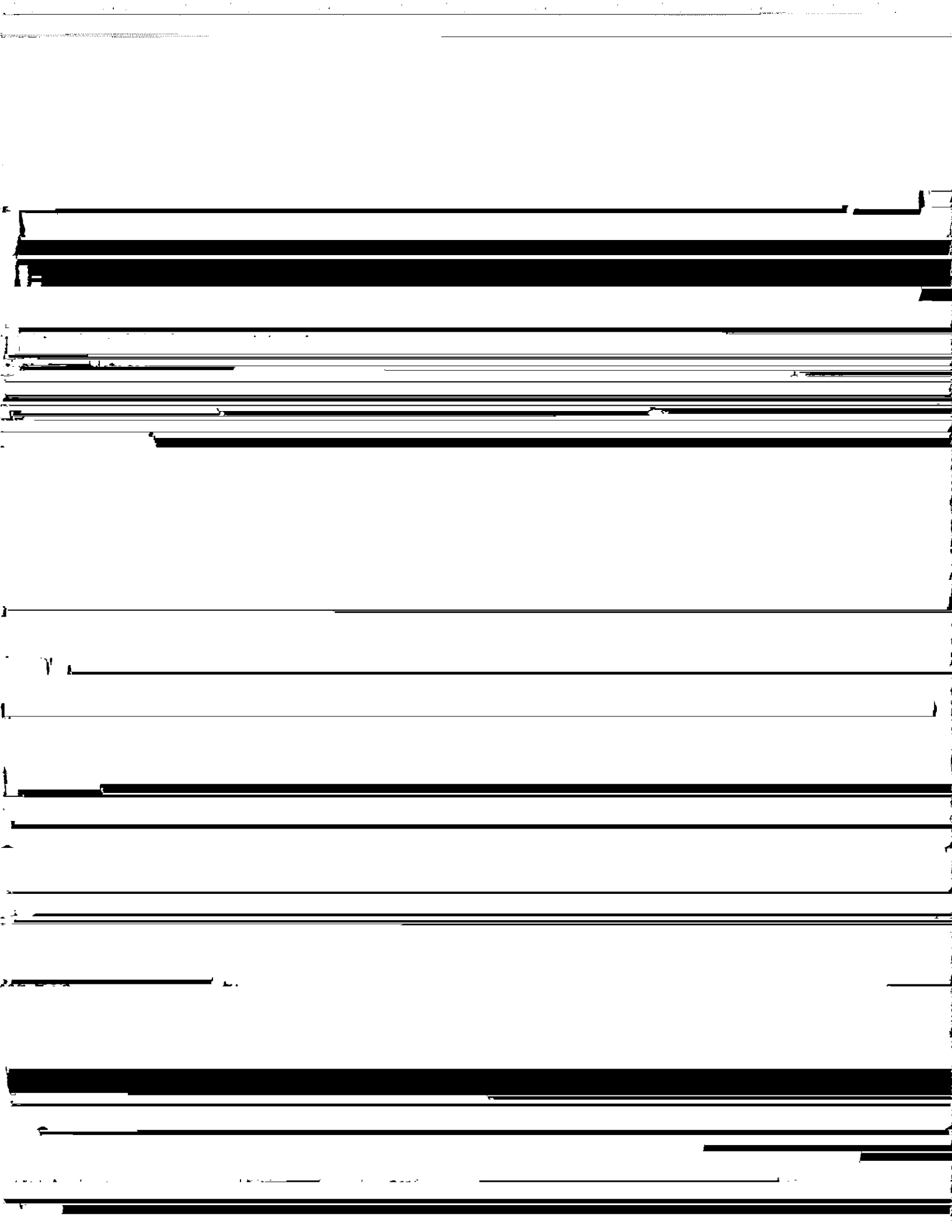
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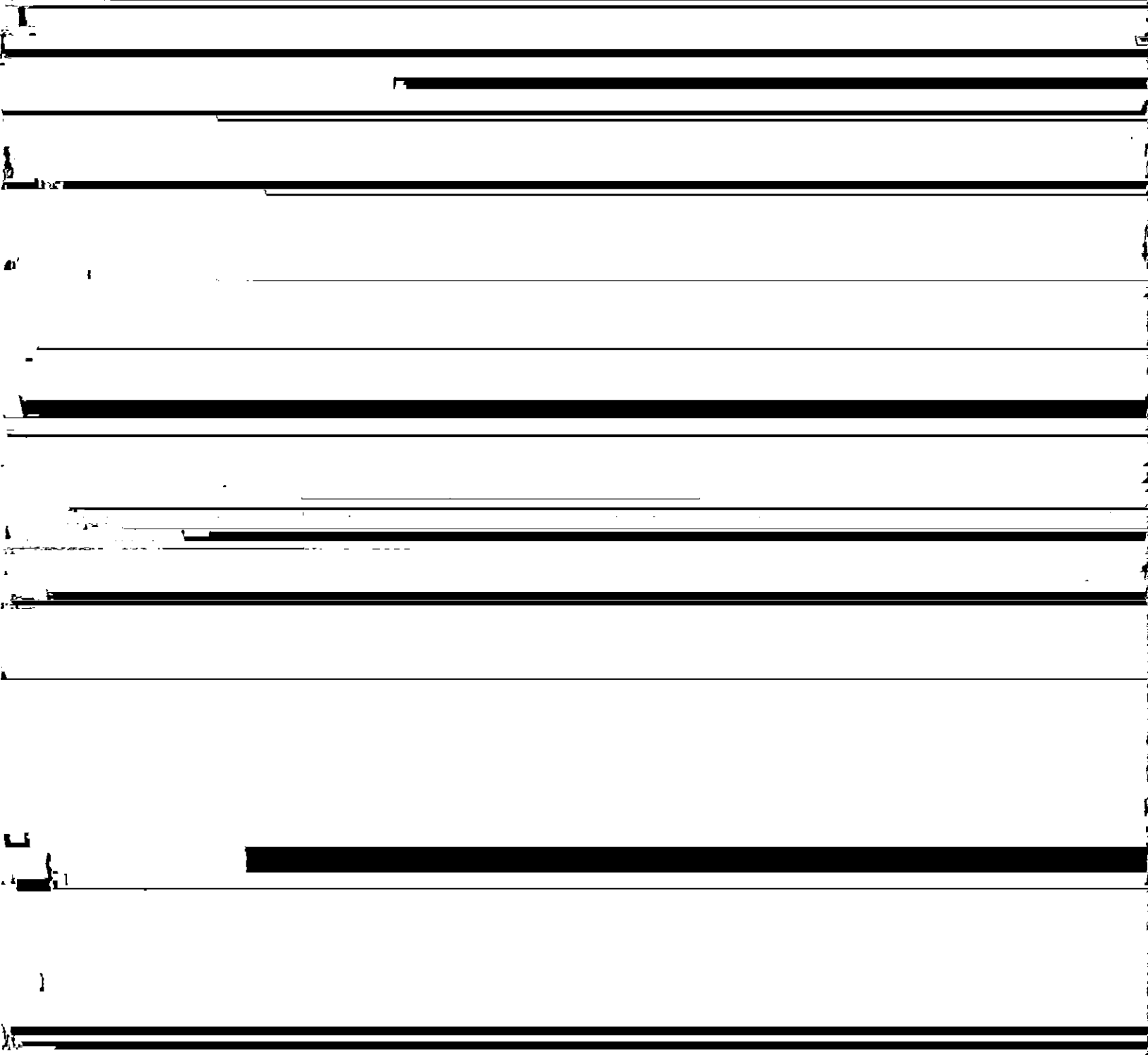


THE REFERENDUM CAMPAIGN

Describe the referendum process in terms of debate initiated from the



milieus and all cultural and ethnic communities" (Le Devoir, April 16, 1980, p. 14) However, in his prediction that the OUI would carry 55 per cent of the vote with 70 per cent of the francophone vote, Lévesque recognized that his desire to attain a majority of the francophone vote



In their quest for their "majority of majorities", the NON side emphasized three basic strategies. It repeated the arguments against a OUI vote which had been expounded in the National Assembly debate -- the ambiguity of the question, the identification of sovereignty-association with separation, and the costs of separation versus the benefits of remaining in Confederation. Evidently, the NON side felt that in the long run the reasons of the heart would succumb to the reasoning of the mind.





The bogeymen of fear are pummelling the stomachs of the weakest and most vulnerable persons in our society and I find this attitude criminal (Le Devoir, April 21, 1980, p. 10).

leader "...spoke with a serenity that comes to someone who has seen the

35. 1/2

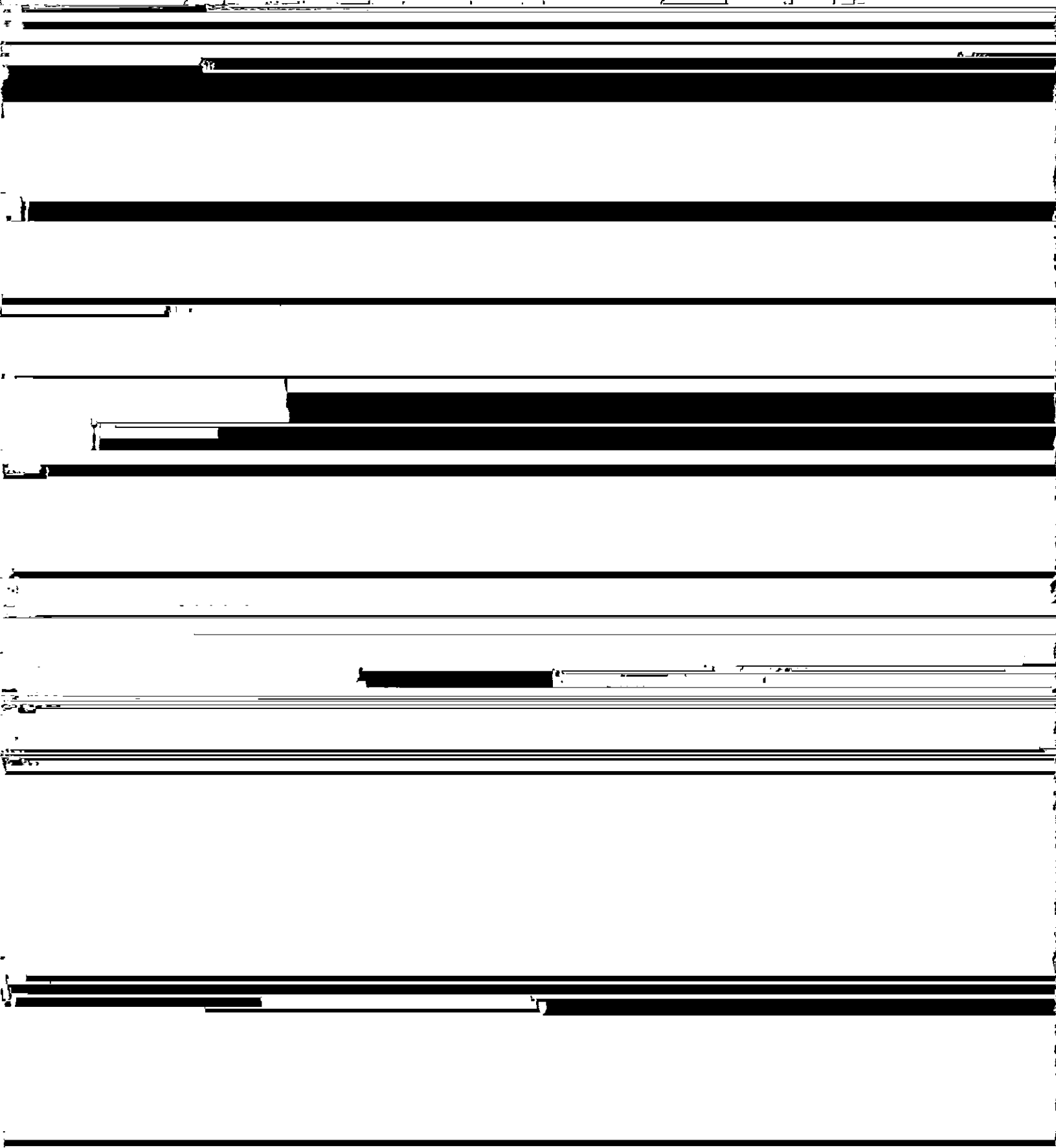
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Table 2.1: Poll Results on the Referendum Question Compared with Significant Referendum Events

<u>Date</u>	<u>Event</u>	<u>Poll Results</u>				
		Yes	No	Ref/ DK	Ref	DK
1979						
June	CROP-Cloutier Poll taken	54	29	16	2	14

Nov. 14	PQ loses 3 by-elections					
Nov. 21	Trudeau Resigns					
Nov. 23-Dec. 3	CROP Poll taken	41	31	28	n/a	n/a

Francophone males were more likely to support a OUI vote than francophone



Then he spoke directly to his defeated opponent:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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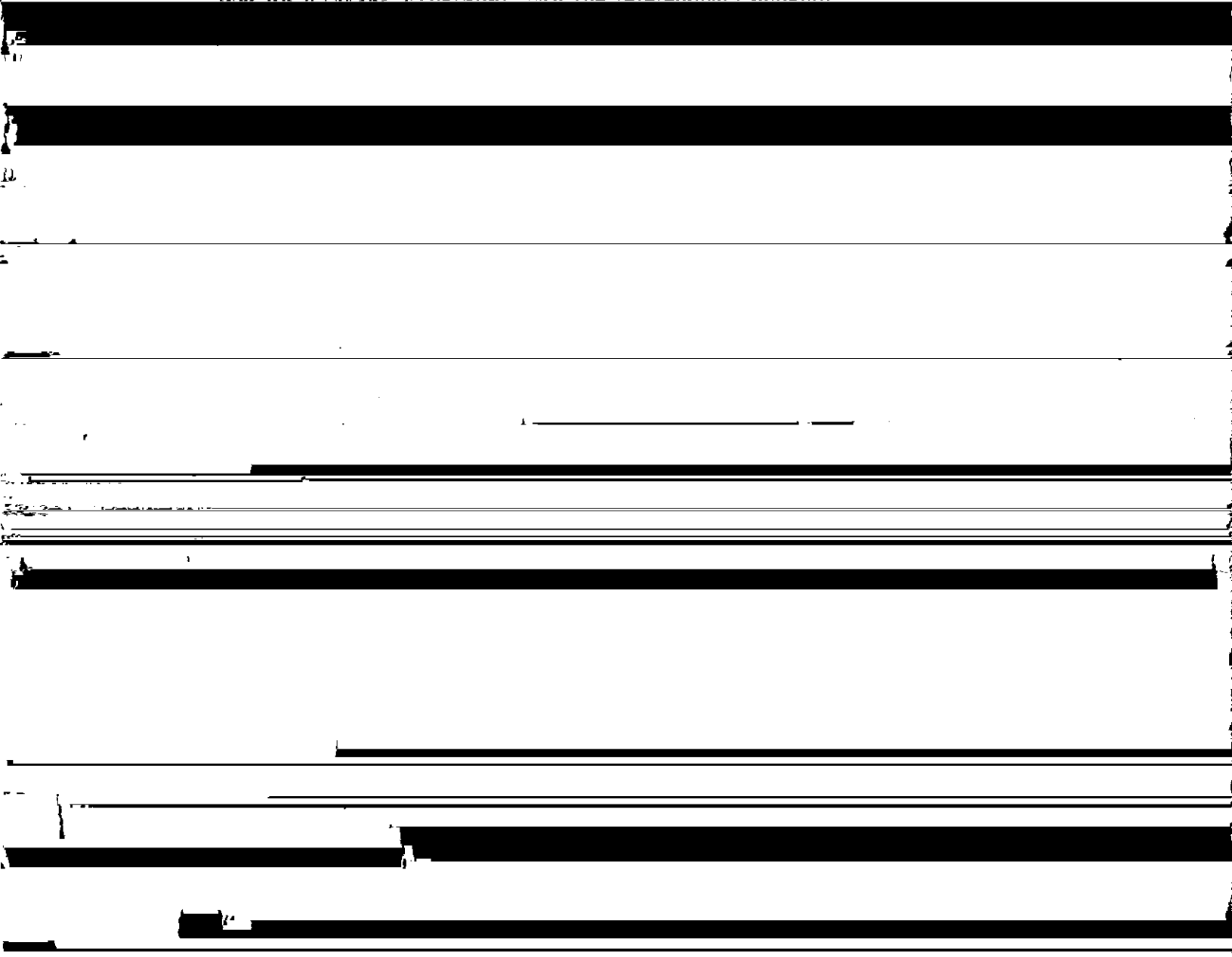
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Lévesque, however, argued that an election in the fall would be too soon for a Quebec exhausted from the referendum campaign. Events in Ottawa



PART TWO

CHAPTER III

THE SUMMER MEETINGS OF THE CONTINUING COMMITTEE  
OF MINISTERS ON THE CONSTITUTION

INTRODUCTION



differences among the parties on constitutional change were great and no

ppetings Rather than compromise his position in order to secure the

The schedule for discussing these items was a brisk one:

June 17 - organizational meeting of ministers and officials responsible for federal-provincial relations after which there would be a break until the first round of meetings on the twelve items.

July 7-25 - three rounds of meetings on the twelve items.

and a "powers and institutions" package. The "peoples' package" consisted of patriation, a statement of constitutional principles and the Charter of Rights. The other items on the agenda concerned the balance of power in federal-provincial relations and institutions which were of more concern to governments. The Prime Minister argued that the "people's package" did not increase the power of either order of government.

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[REDACTED]

[REDACTED]

[REDACTED]

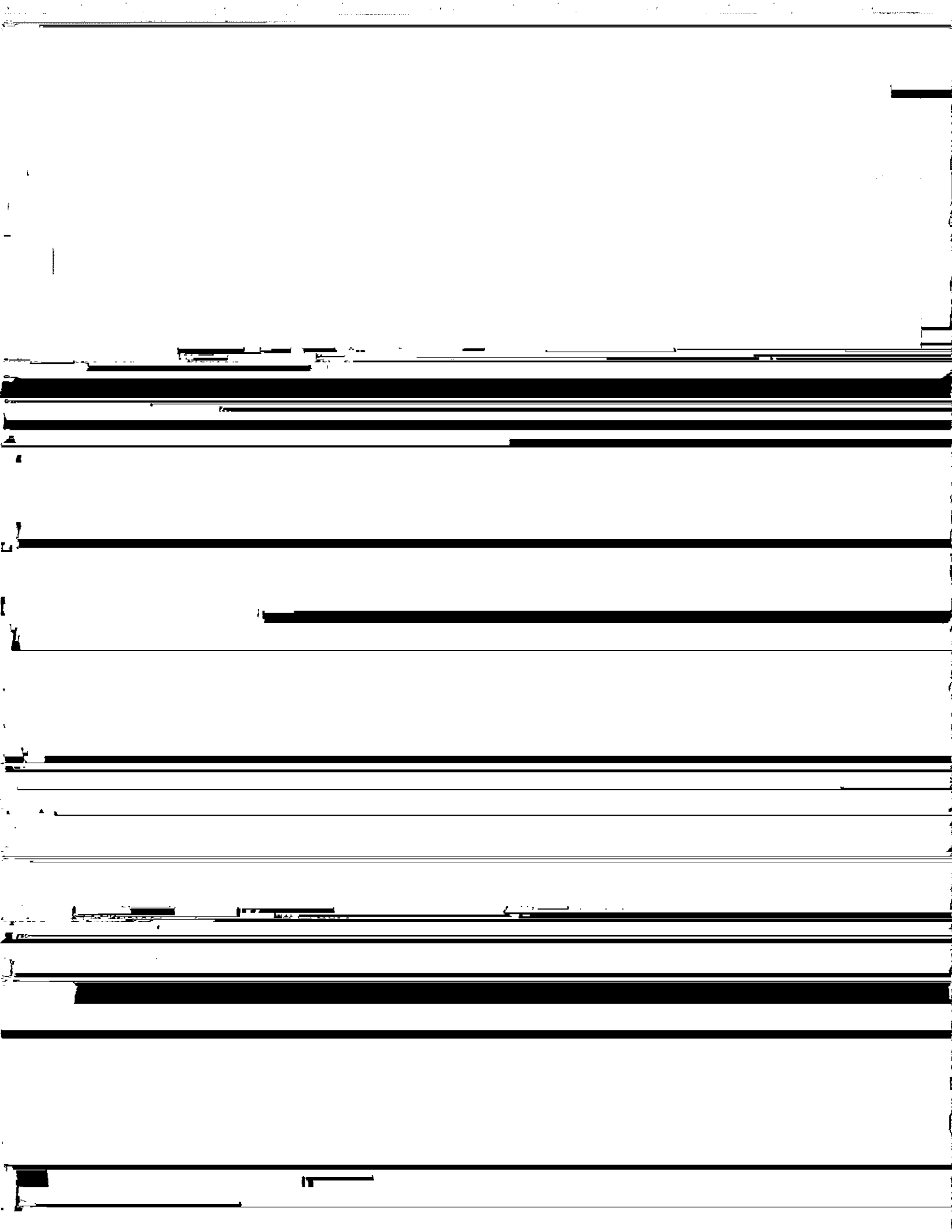
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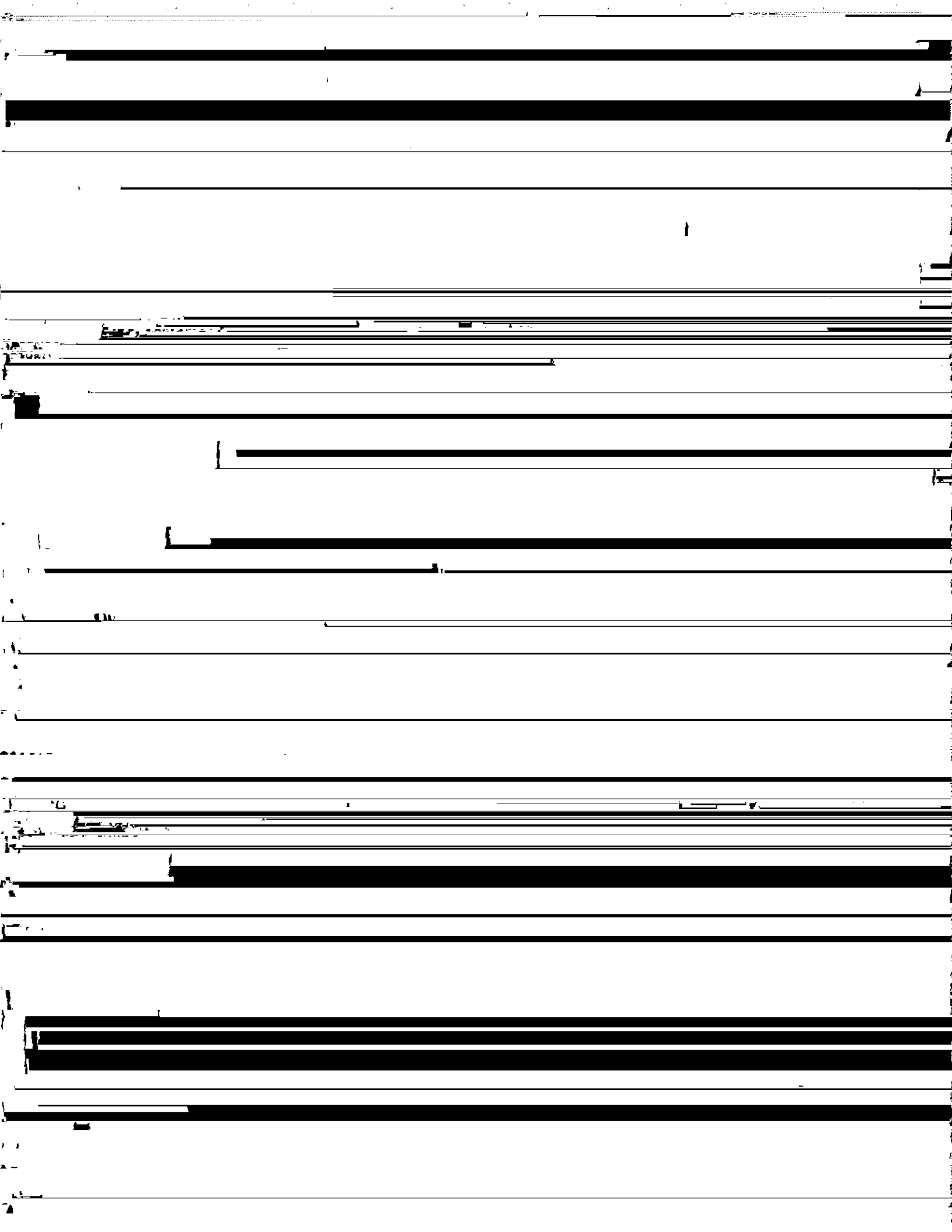
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THE UNIVERSITY OF

[REDACTED]





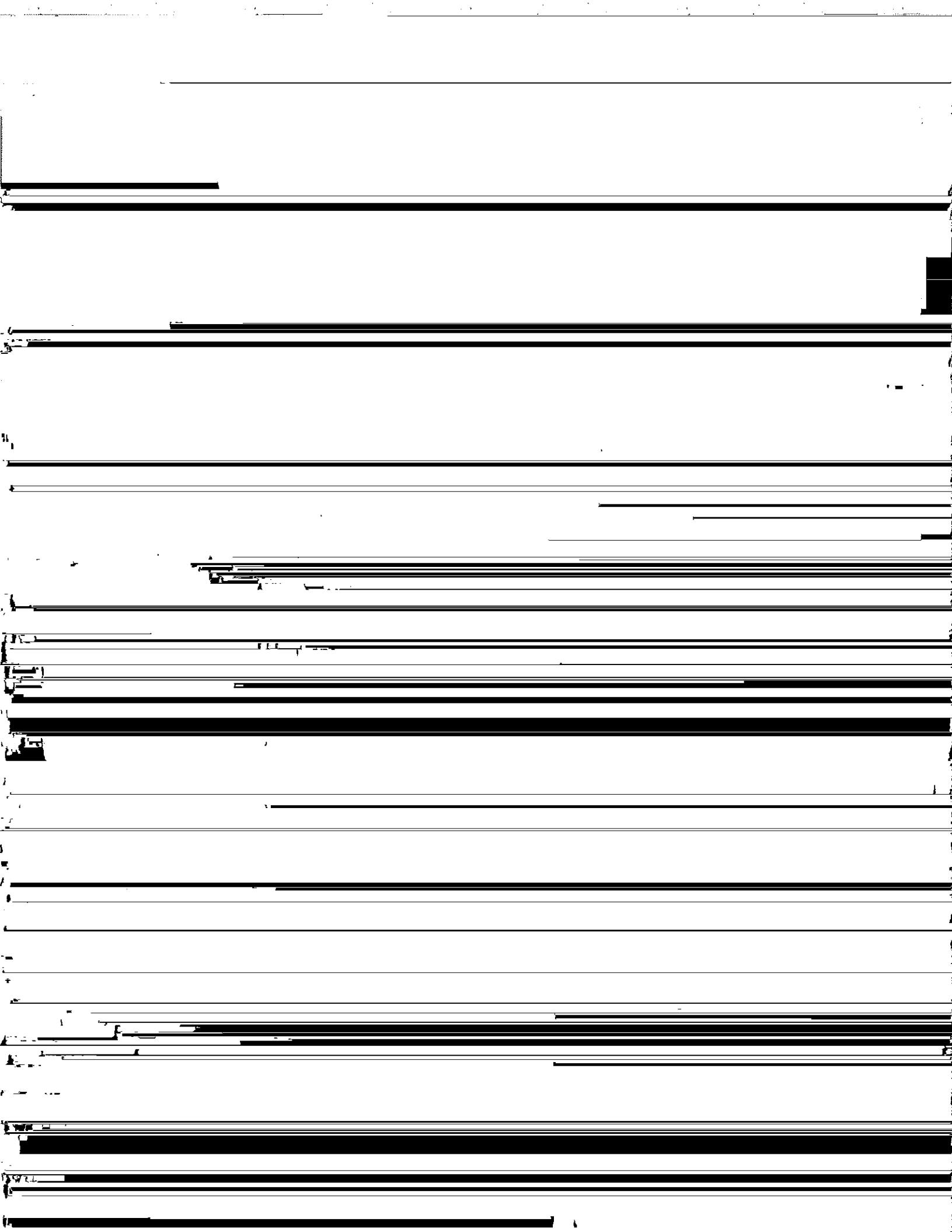


Here is where the participants stood after four days of public debate

### Resource Ownership and Interprovincial Trade

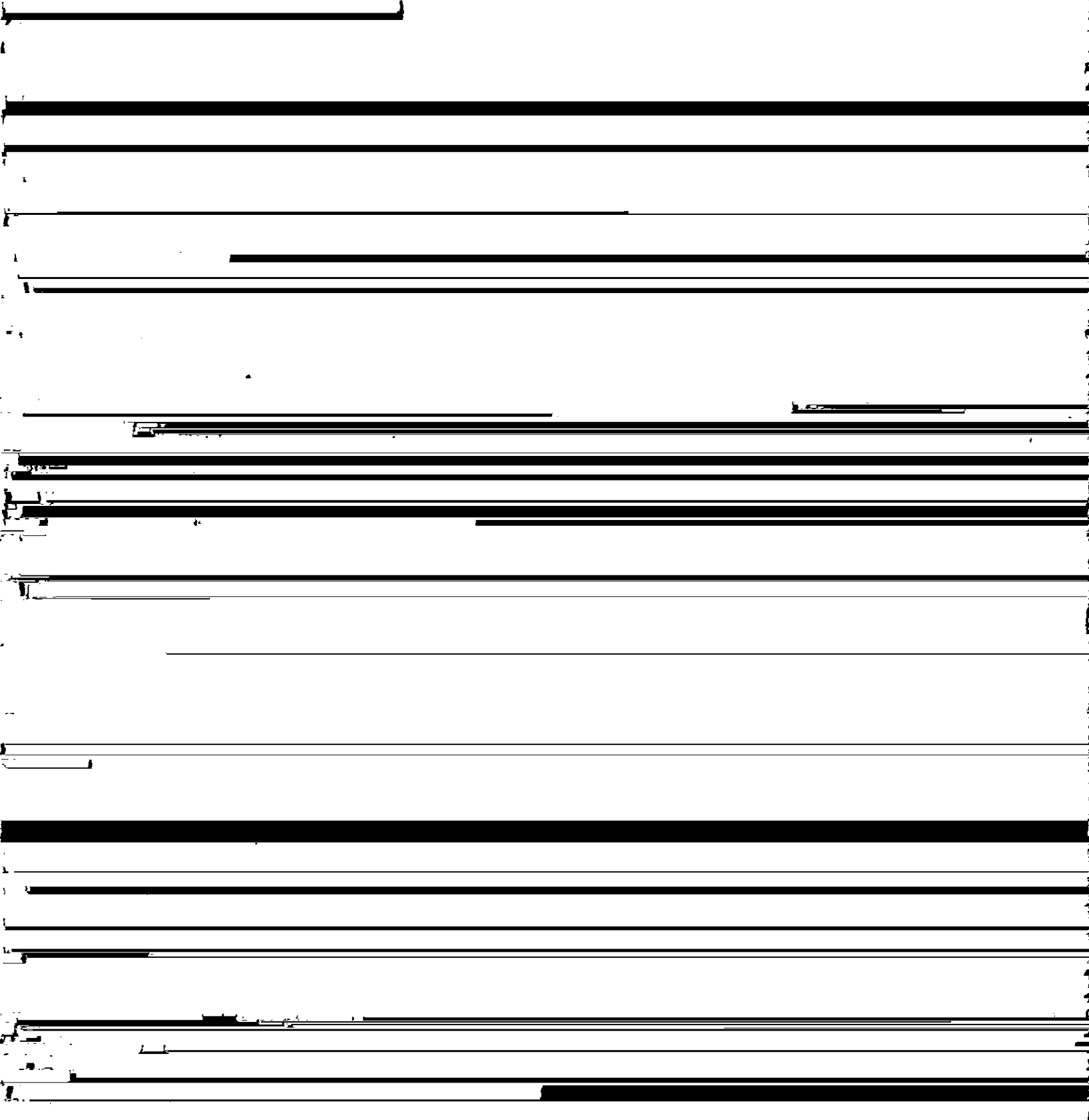
The federal government agreed that the constitution should clearly

also be required to carry a national program service. The federal



The power of the federal government under section 96 of the BNA Act to appoint the judges of the superior, county and district courts was raised in conjunction with discussions on the Supreme Court. The provinces in

The federal government supported by Nova Scotia and New Brunswick





Patriation and the Amending Formula

PROPOSED AMENDING FORMULAE

Best Efforts Draft, the Vancouver Consensus, 1980

The legal draft based on the Vancouver consensus provided a number of ways of amending the Constitution.

The legal draft provided a number of ways of amending the Constitution.



The ideal of the economic union was supported by all the ...





Summary of Proposal for a Common Provincial Stand

1. Natural Resources: Provincial legislative power over natural resources; concurrent power over extra-provincial trade subject to equal pricing of resources exported and not exported; federal paramountcy in regulation of international trade and commerce or to serve a compelling national interest; provincial taxation by any mode or system which does not discriminate between resources exported and not exported. (1979 Best Effort draft).
2. Communications: provincial legislative power over telecommunications works.



PART THREE

CHAPTER V

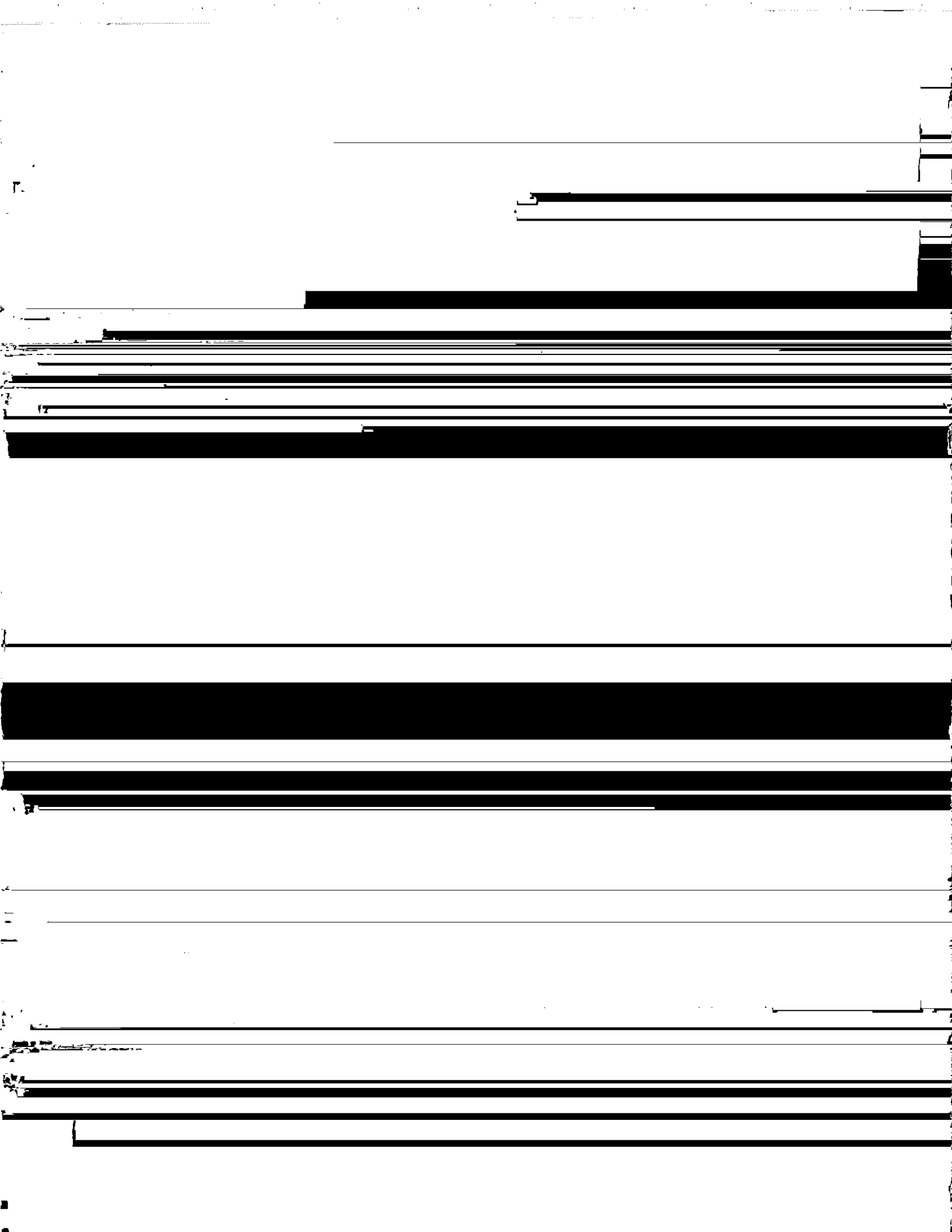
THE FEDERAL CONSTITUTIONAL RESOLUTION

INTRODUCTION

See gentlemen, I intend to reflect on these matters d

Now it is our turn to repay our inheritance. Our duty is clear: it is to complete the foundation of our country.

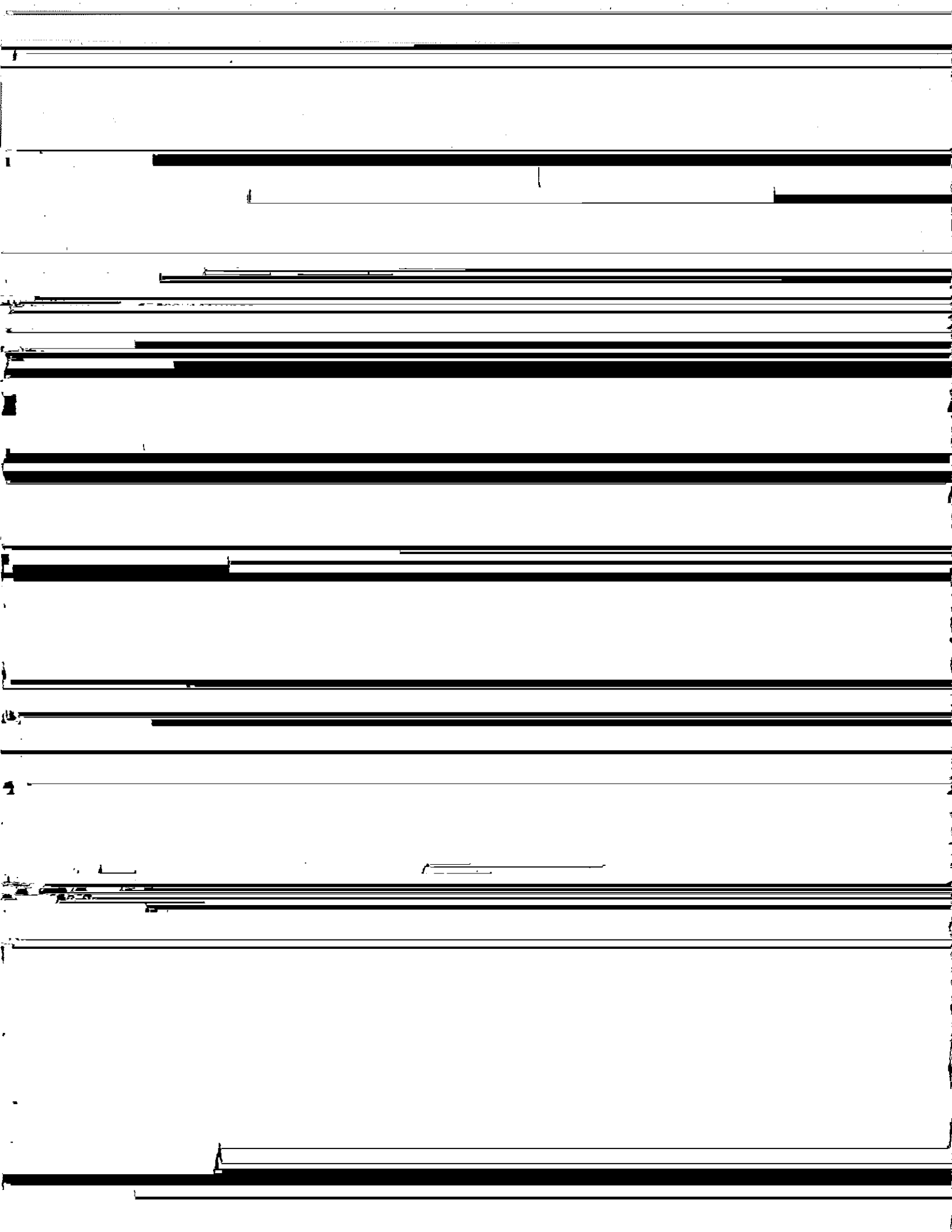
1941







A direct reference to the Supreme Court, however, raised the possibility of an adverse legal judgement that would effectively end federal plans for constitutional change as had happened in 1978 with the Senate reference



Because a constitution is so basic to a country, it must be the product of the broadest possible consensus. It cannot be arbitrary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

The NDP leader however, felt that the Resolution did not go far enough. Patriation for Broadbent was "unquestionably desirable"; the amending formula proposed - requiring unanimity during a period used to work out a



CHAPTER VI



The Liberals chose to introduce the Resolution to the House of Commons  
soon after the recall of Parliament in the fall. Debate in the House would



If the government will show flexibility in committee and accept some amendments, we can have a decent piece of legislation. If the government wants our support in the House of Commons, the very minimum it must do is to make reasonable, fair changes in the constitution in the resource sector which are important to

~~Constitutional changes in the House of Commons~~

[The remainder of the page is heavily redacted with multiple thick black horizontal bars.]

emotions had run high and when closure was invoked over the objections of  
by the DCF and the NDR, the Conservatives as a group responded by

THE SPECIAL JOINT COMMITTEE OF THE SENATE AND OF

THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

P. \_\_\_\_\_

Appendix

people exclusively by "stress and mental 'support'" support for their posi-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**The Witnesses**

As noted above, the committee decided to hear only groups, governments and expert witnesses. A total of 97 witnesses appeared before the committee



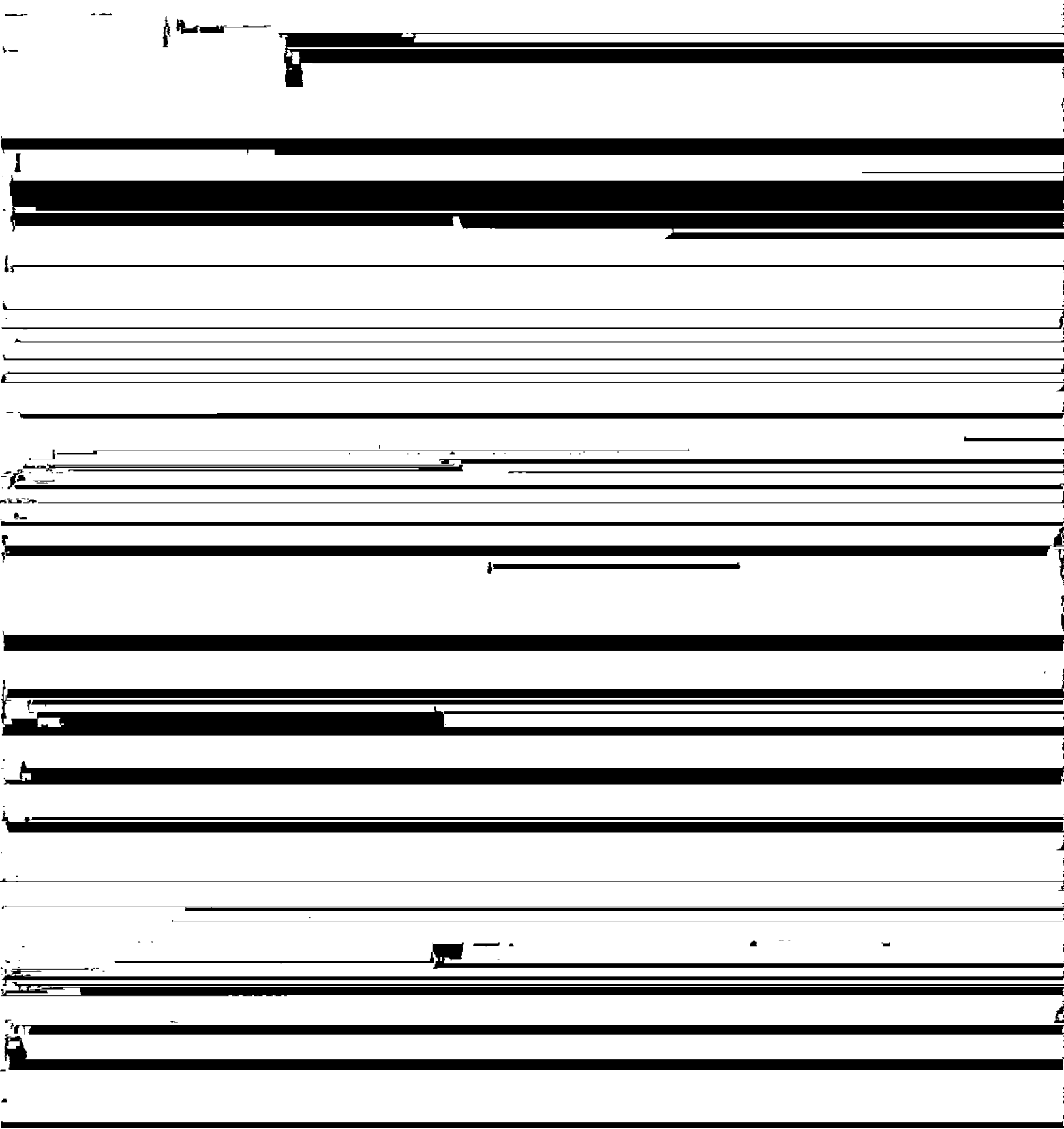


Section 15 concerning the right to equality before the law drew criticism from women's groups who argued that in Canadian judicial practice this phrase guaranteed only the right to "equality in the administration or application of the law by law enforcement officials and judges."



Section 101(a)(1) of the Act

... in the process, even



Archbishop Scott argued that the federal government's plans put Great Britain in an unfair position. He felt that the federal government should

~~give up its plans and support the British position.~~

[REDACTED]

[REDACTED]

A-

[REDACTED]

[REDACTED]

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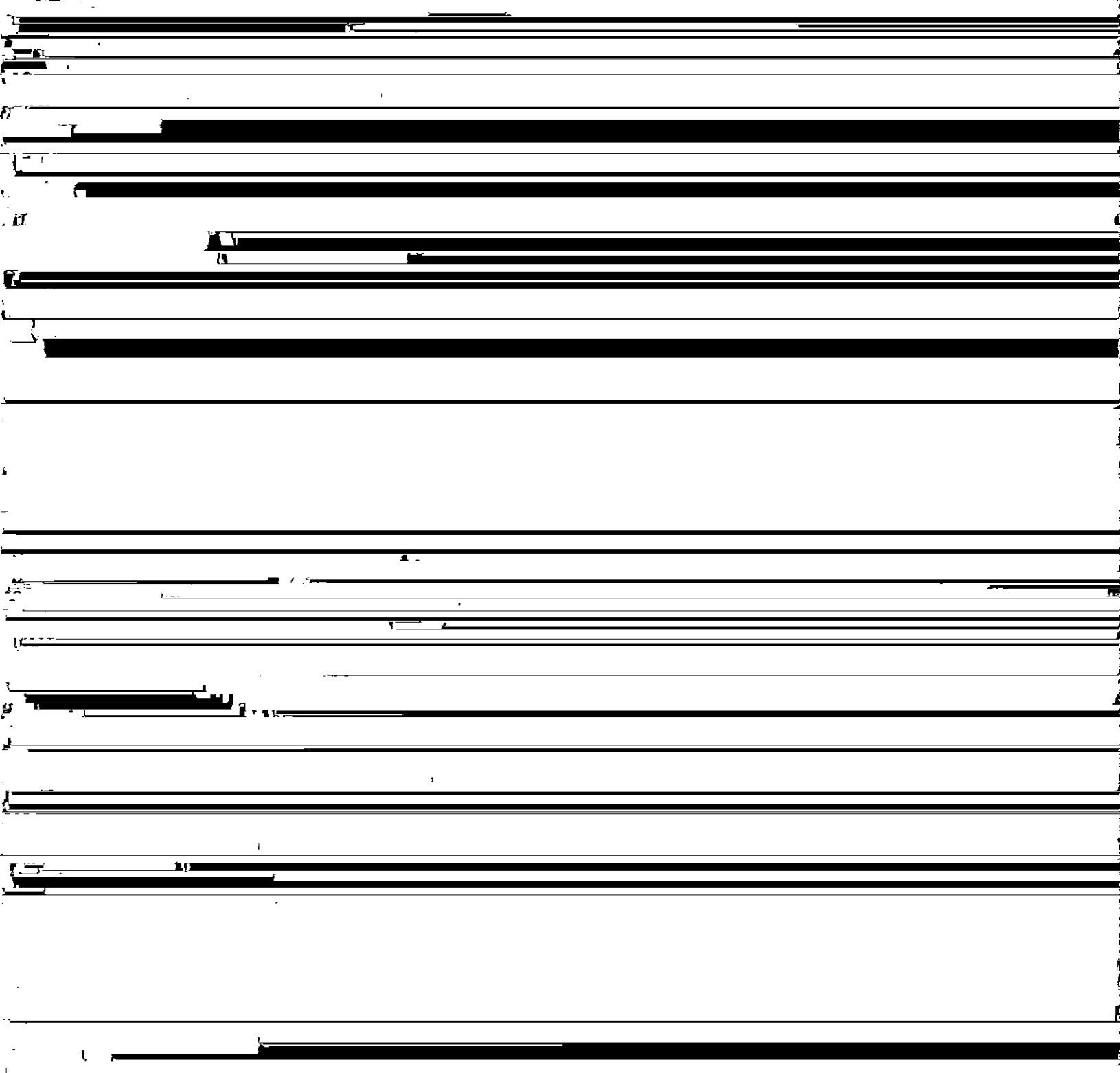
[REDACTED]

[REDACTED]

[REDACTED]

Changes to the Charter

Section One was changed to subject the rights and freedoms in the Charter only to "reasonable limits prescribed by law as can be demonstrably



governments had that power as well. A Referendum Rules Commission is to be appointed for all referenda. The Commission would be composed of the Chief

... shall subject the rights of citizens to vote in referenda

[REDACTED]

[REDACTED]

[REDACTED]

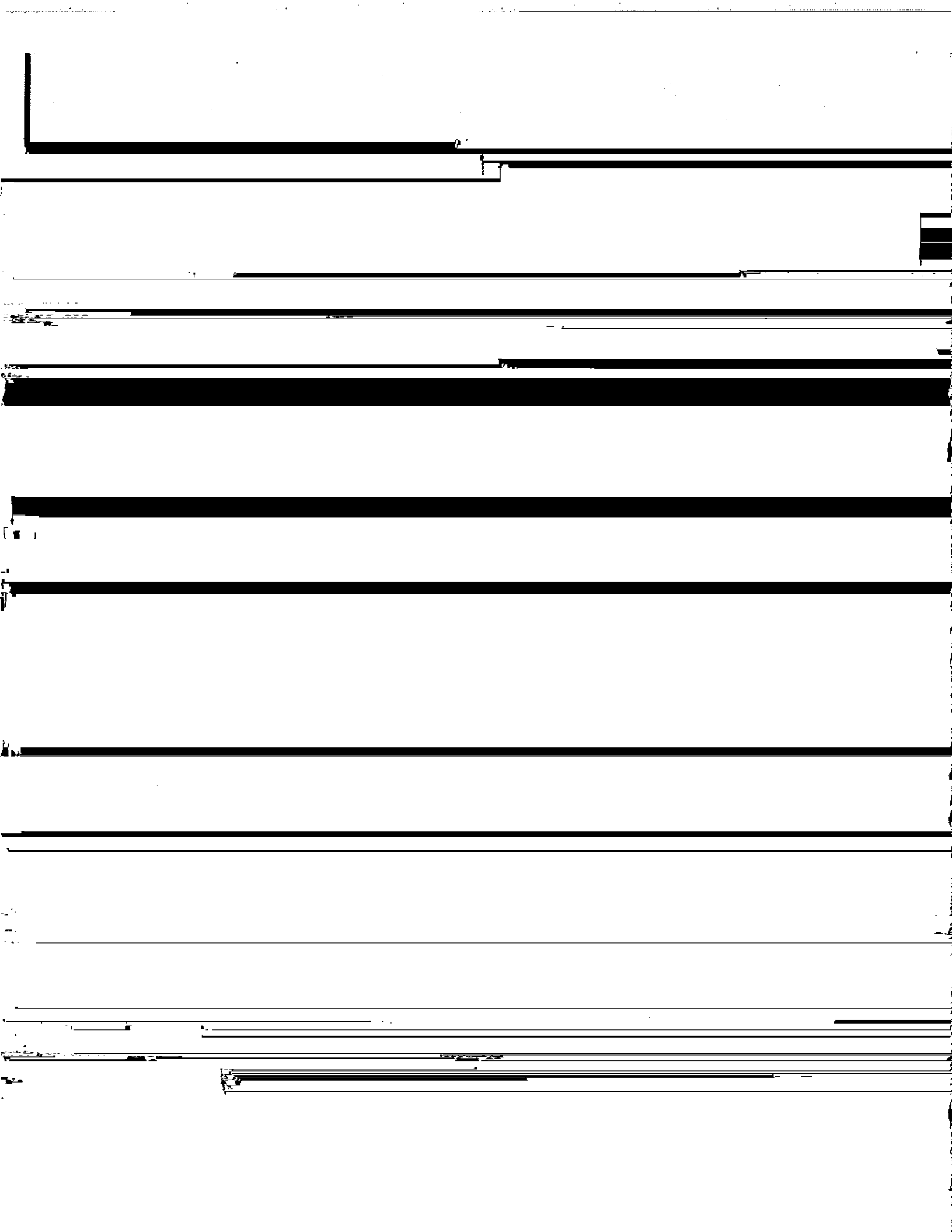
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[REDACTED]



changed. As before, constitutional conferences must be held at least once a



Q5

18

...

The Joint Committee's final report containing a consolidated version of

## THE SECOND DEBATE IN PARLIAMENT

With the final report of the Joint Committee the debate in Parliament entered a new stage. Parliament as a whole would consider the newly amended Resolution. The Liberals were concerned to have this new stage over with as quickly as possible. They seemed still to be aiming for a July 1st date for

[REDACTED]

10

[REDACTED]

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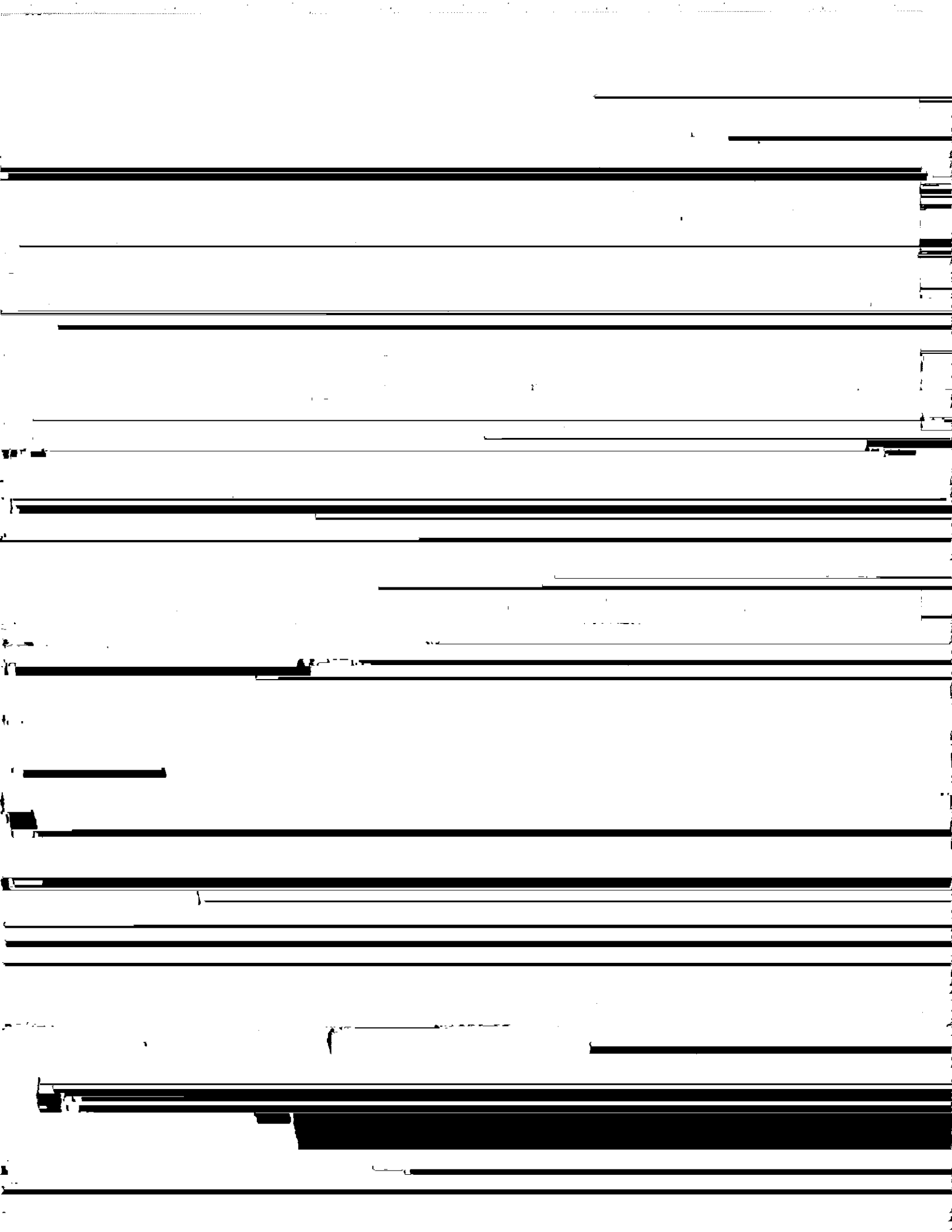
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more days while extending House hours, limiting speeches in order to allow



Thus, a long and bitter fight in Parliament came to an end. The



Finally, court actions and the resulting coverage by the media served

The stage was thus set for the final legal battle in the Canadian courts. On April 28, 1981, hearings on all three appeals began, ending on

If Part V of the proposed resolution referred to in question 1 is enacted and proclaimed into force could

- (a) the Terms of Union, including terms 2 and 17 thereof contained in the Schedule to the British North America Act 1840 (12-13

... .. the reference book

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

According to this argument, because the Resolution affected provincial powers, rights and privileges, it was beyond the power of the federal government to pass. Furthermore, as

The word 'compact' as quoted above means agreement amongst delegates

of legislative powers and interests between on the one hand those



The Saskatchewan Position

The Saskatchewan Position

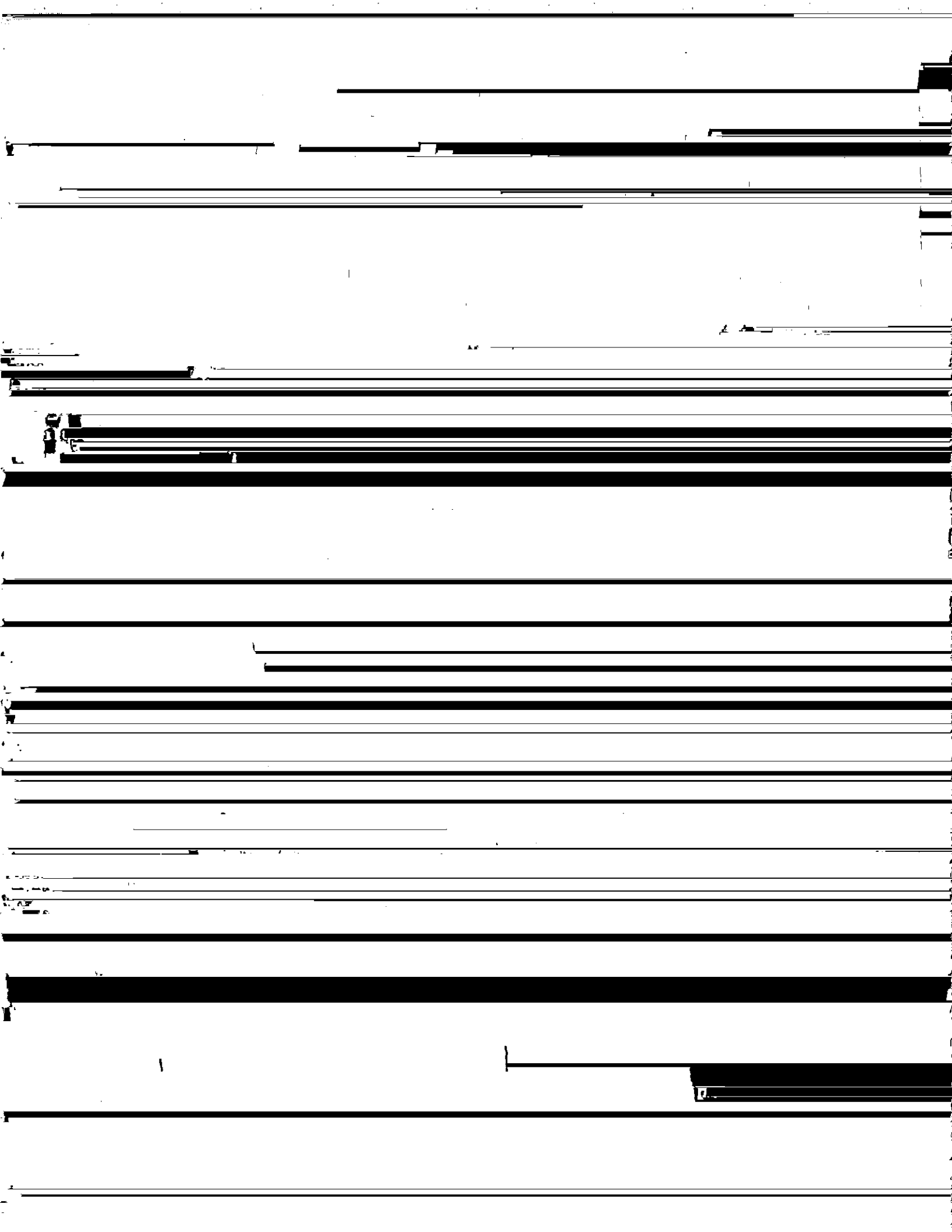
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Federal lawyers recognized that the courts might reject this line of argument. They, therefore, offered the argument that there would be "no basic change in the equilibrium between the federal and provincial govern-  
ment. The balance would be in favour of provincial

The federal government cited ...

17

17



however, Newfoundland's consent is not necessary. Hence, by a two step process, the terms of Newfoundland's entry into Confederation could come to be changed without its consent.

tive competence of the provinces by infringing on their powers to legislate  
in respect of matters reserved to the states. As for the amending formula, they

The Quebec Court of Appeal: April 15, 1981

The political agreement following the Newfoundland decision reduced

of the Court of Appeal. Nevertheless, the

TABLE: 7.1

THE REGISTRATION BY THE COURTS

ARGUMENT HEARD: December 4, 1980

presented by the Attorneys-General of Quebec,



CHAPTER VIII

OTHER PROVINCIAL ACTIONS

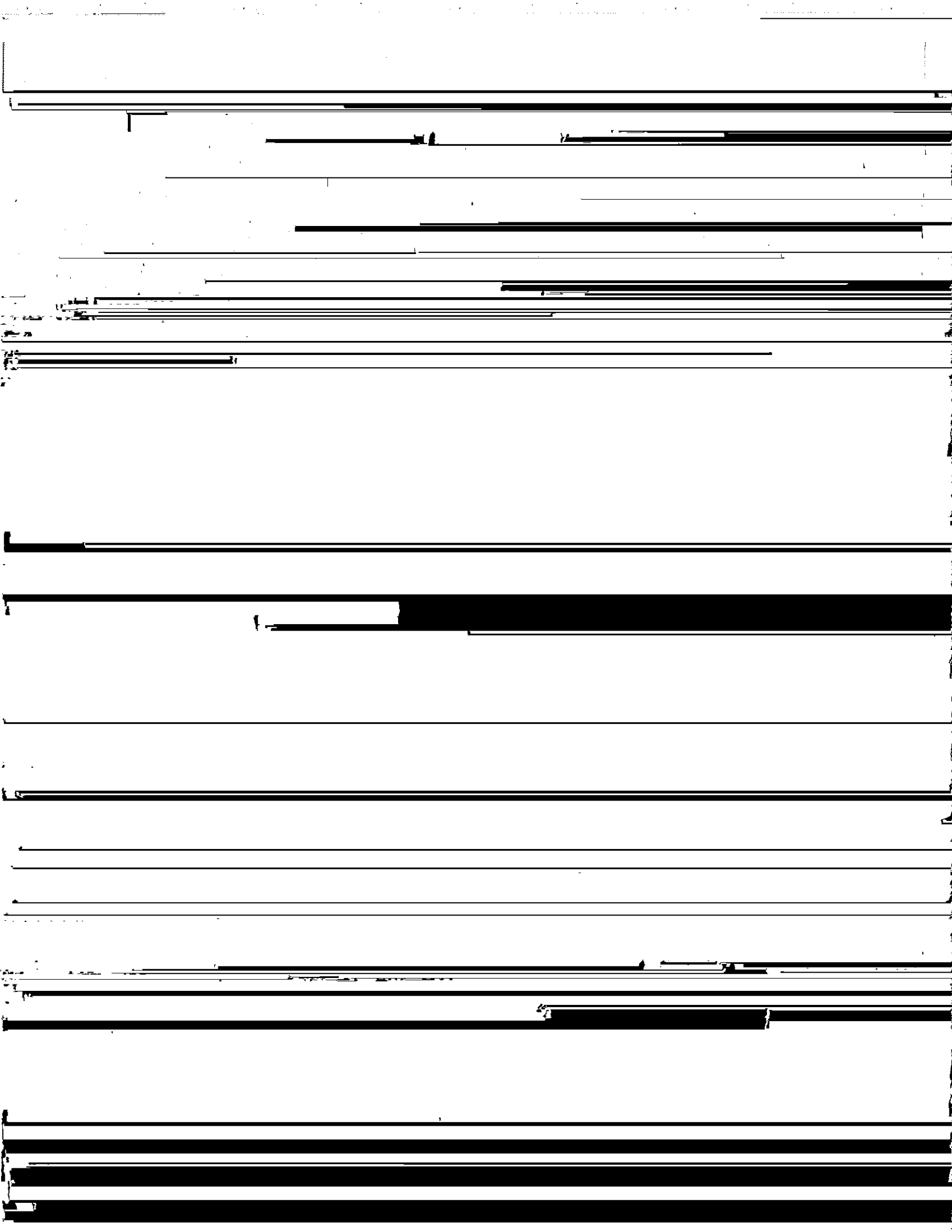
1. patriation will take place from Westminster to the people of Canada and will formally reside with Parliament;
2. all provincial powers, privileges, prerogatives and rights will



THE PROVINCIAL ALTERNATIVE

Sensitive to the Prime Minister's criticism of their inability to offer an alternative proposal, the dissenting Premiers accelerated their efforts to reach a consensus on constitutional reform. On April 16, 1981, they succeeded. Eight Premiers (the original six had now been joined by Nova

PREMIER STERLING LYON  
MANITOBA

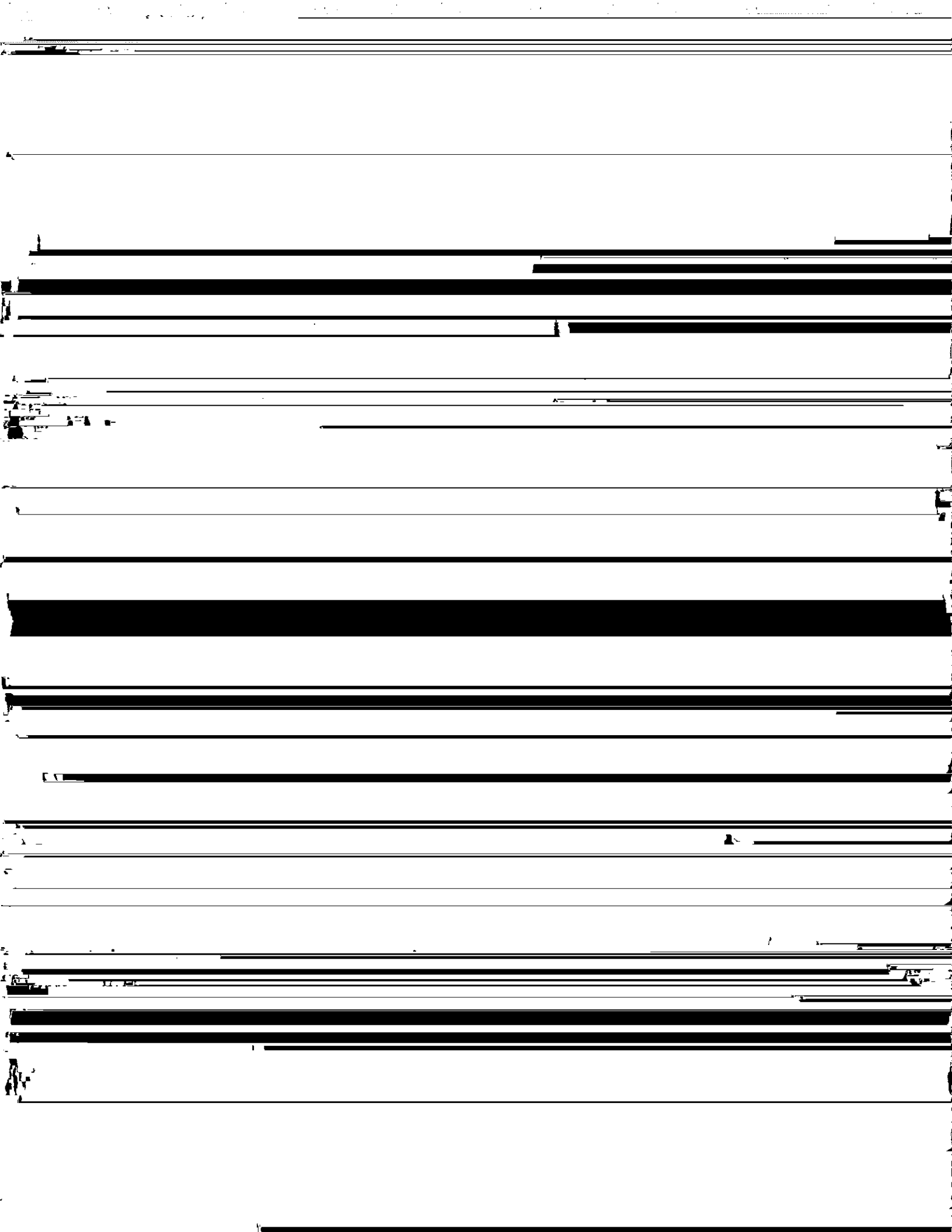


Thus, both the federal government and the provinces opted for a winner-take-all situation and eschewed compromise.

Looking back, it seems that there were few incentives for either side

CHAPTER IX





**The Select Committee on Foreign Affairs**

Attention soon focussed on the work of the Select Committee on Foreign Affairs. On November 5, 1980, the Committee decided to inquire into the role of the United Kingdom regarding Canadian constitutional reform. The Committee heard only British witnesses, but written submissions from ~~Canada, the United States and governments were received and considered.~~

circumstances surrounding enactment of the Statute of Westminster, 1931, which, at Canadian request, left the BNA Act in British hands. However, the Committee did not say that the unanimous consent of the provinces was necessary before any amendment could be passed. Rather,

The UK Parliament's fundamental role in these matters is to decide whether or not a request conveys the clearly expressed wishes of Canada as a whole, bearing in mind the federal character of the Canadian constitutional system.

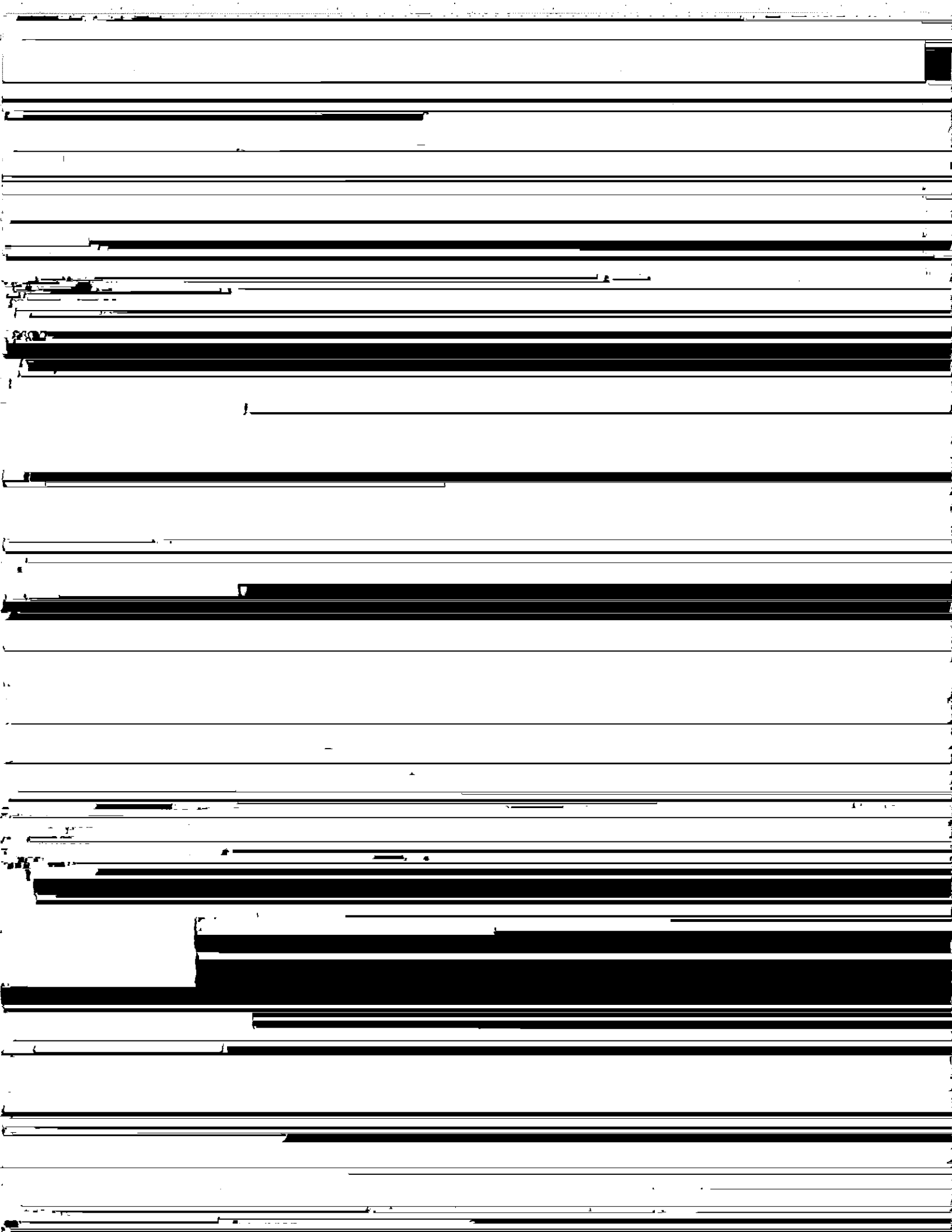
Where a requested amendment or patriation would directly affect the



laterally its power to amend the Canadian constitution. This it termed a

THE ATTITUDE OF THE THATCHER GOVERNMENT

Soon after the release of the Resolution Canadian External Affairs





CHAPTER X

THE PUBLIC RESPONSE

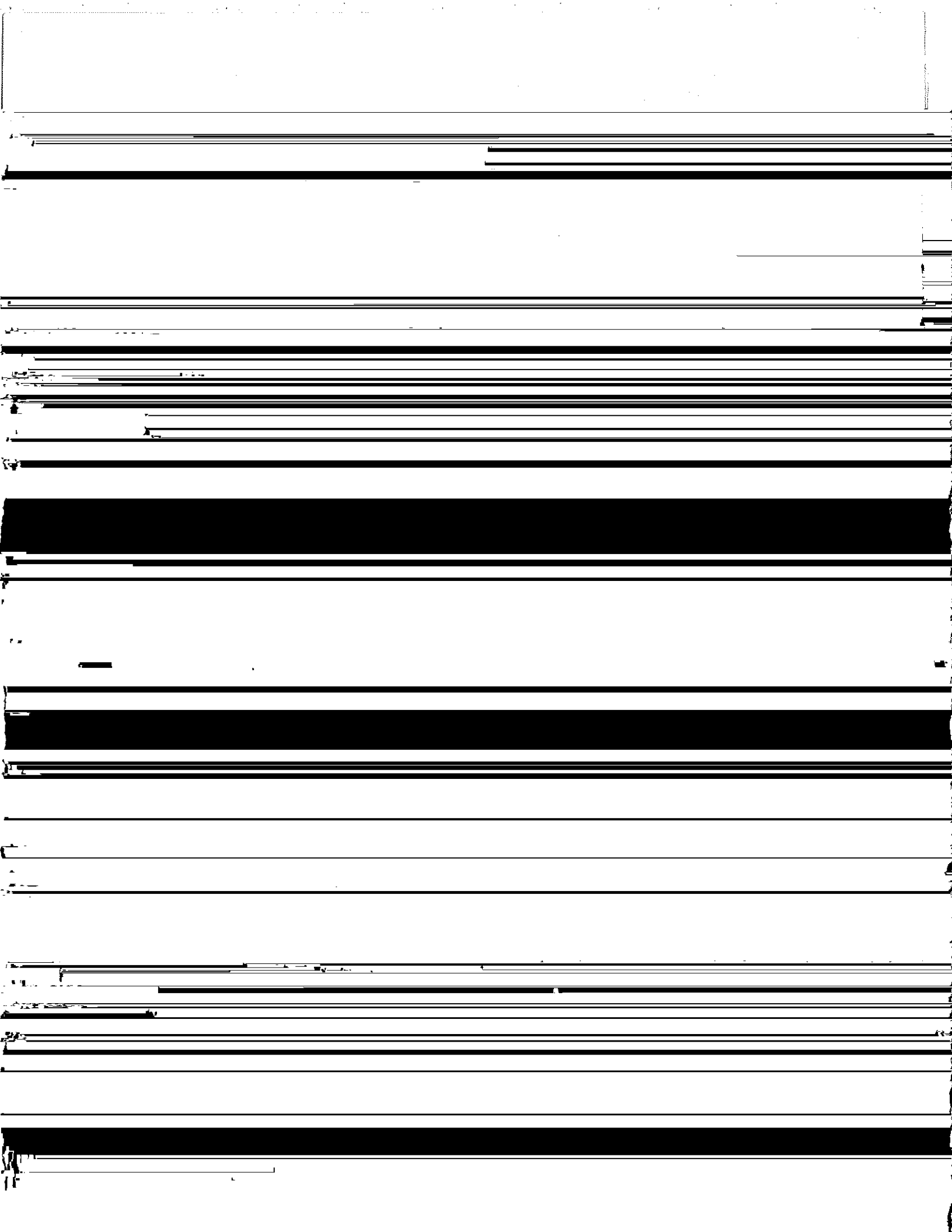
INTRODUCTION

Leaders of both the provincial and the federal governments sought to



Reform

	<u>Nat'l</u>	<u>All</u>	<u>Que.</u>	<u>Ont.</u>	<u>Prairies</u>	<u>B.C.</u>
ould	78	74	79	76	82	82
ould not	12	16	7	16	13	4
i't say	10	10	14	9	5	13
ould	91	96	83	93	95	95
ould not	2	2	4	2	2	1
i't say	7	2	13	5	3	4
ould	81	89	83	80	78	75
ould not	11	-	7	12	17	18
i't say	8	11	10	8	5	7
ould	83	93	78	92	73	75
ould not	10	-	11	4	23	12
i't say	8	7	11	5	4	12
iform						
rove	27	18	28	35	18	21
approve	58	58	55	52	72	61
ilified/	15	23	17	13	10	18
i't know						



...decreased to 26 per cent while concern with energy issues had

1. A constituent assembly be elected by the people with equal

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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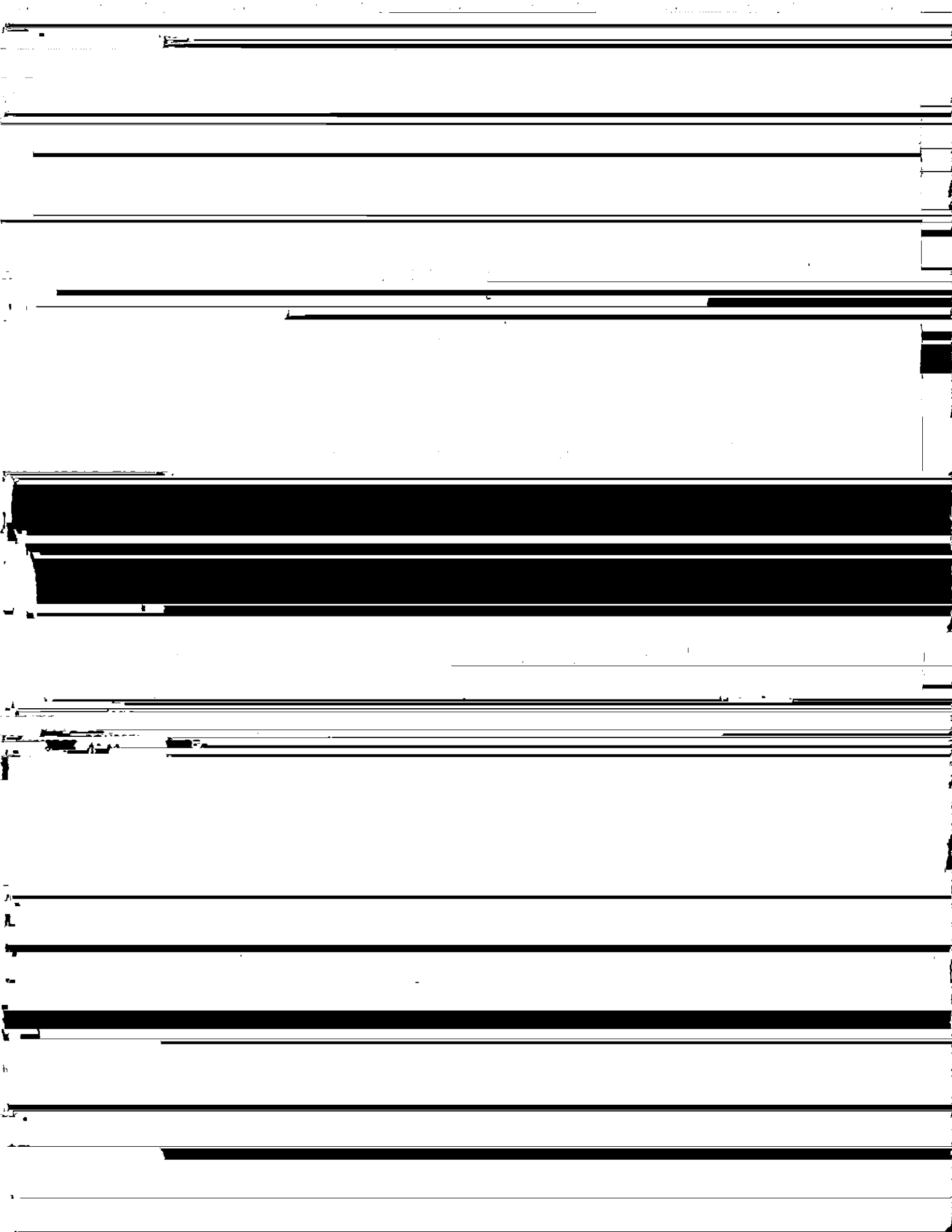
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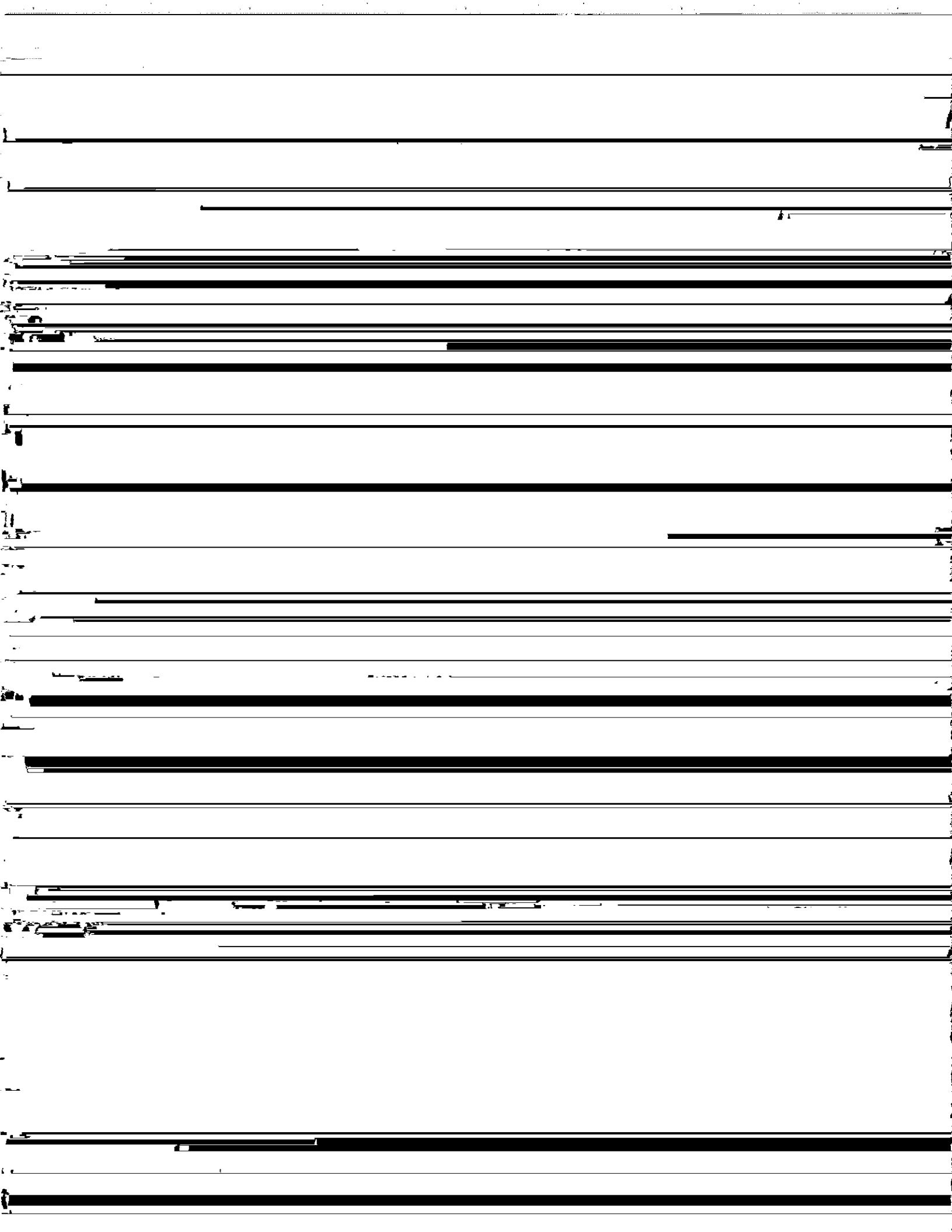




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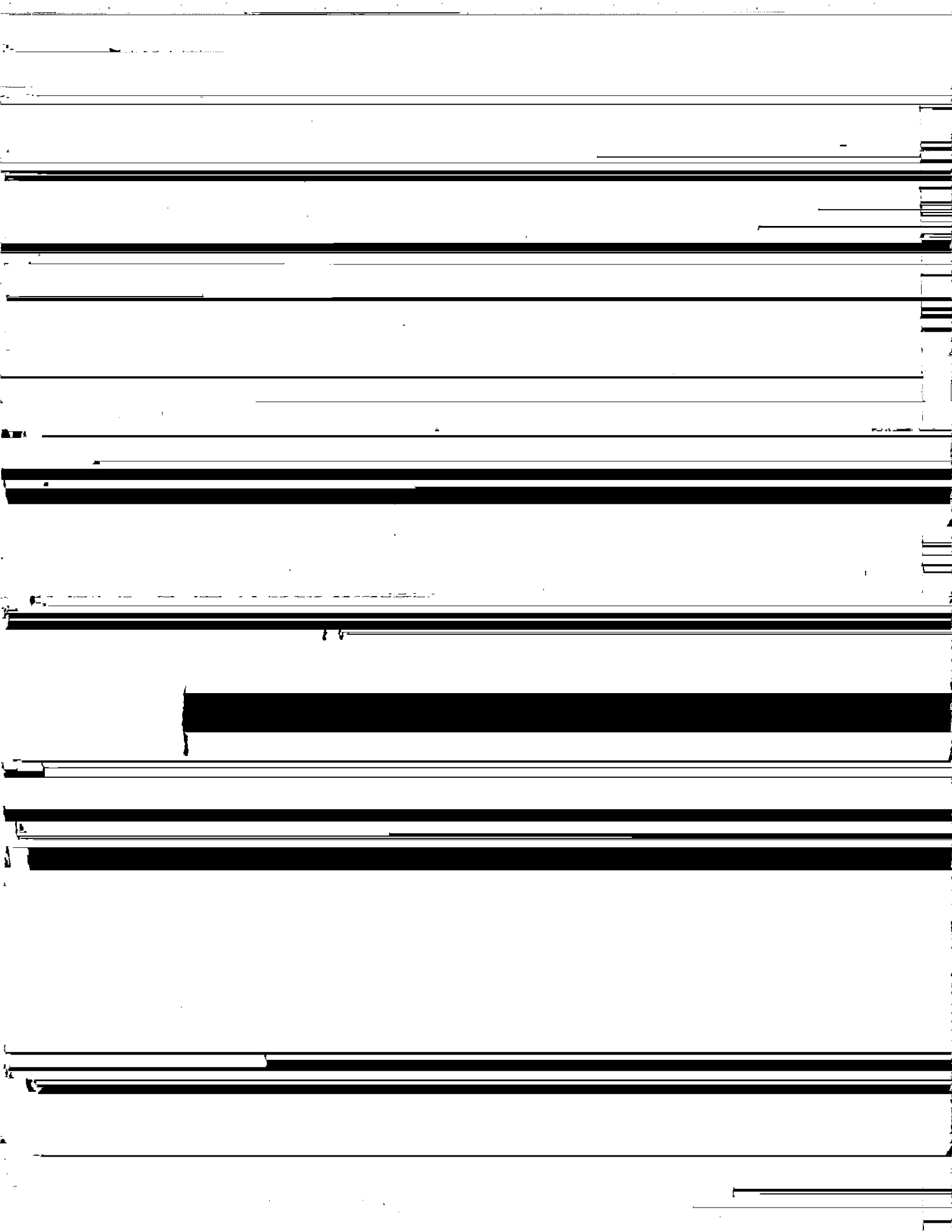






**The Federalist Response**

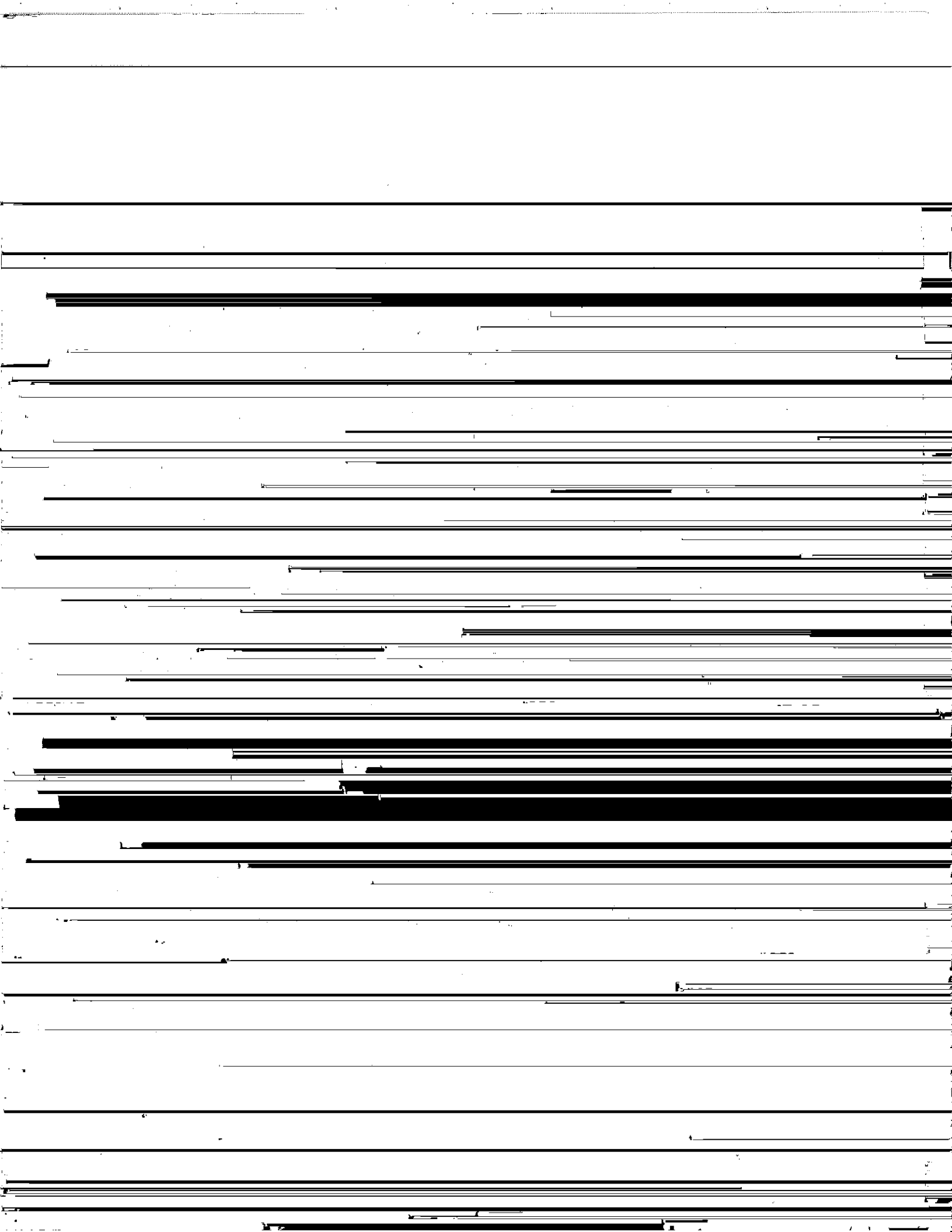




through advertising and speaking tours. Now that citizens have been









APPENDIX A

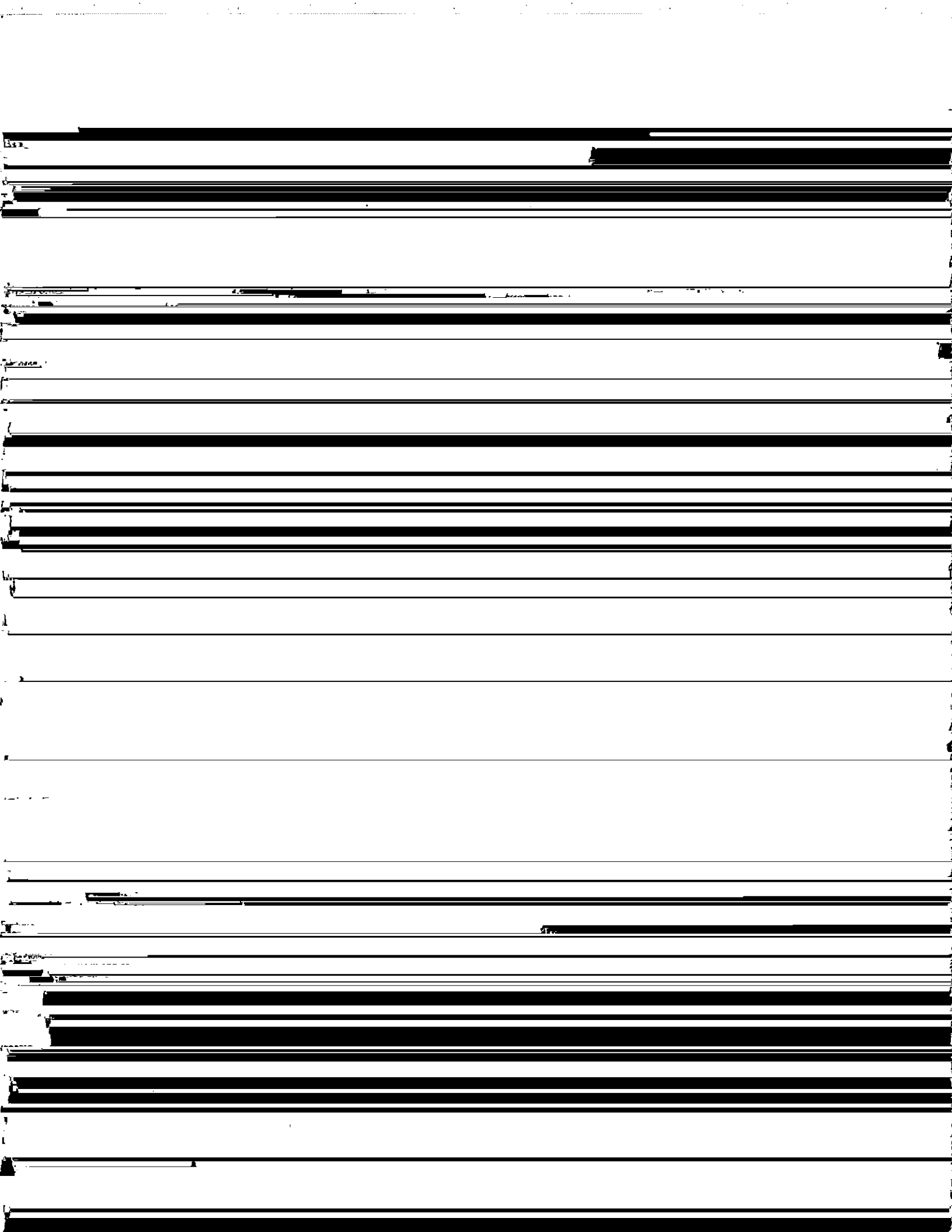
**A Short Guide to Quebec's Referendum Act**  
(assented to on June 23, 1978 as Bill 92: Referendum Act)

**The Referendum Process**

premier introduces a question to the National Assembly and asks that it be approved.  
(A slightly different process is followed when a bill of the Assembly is to be the

Department Ministère

APPENDIX B



a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Participation of territories

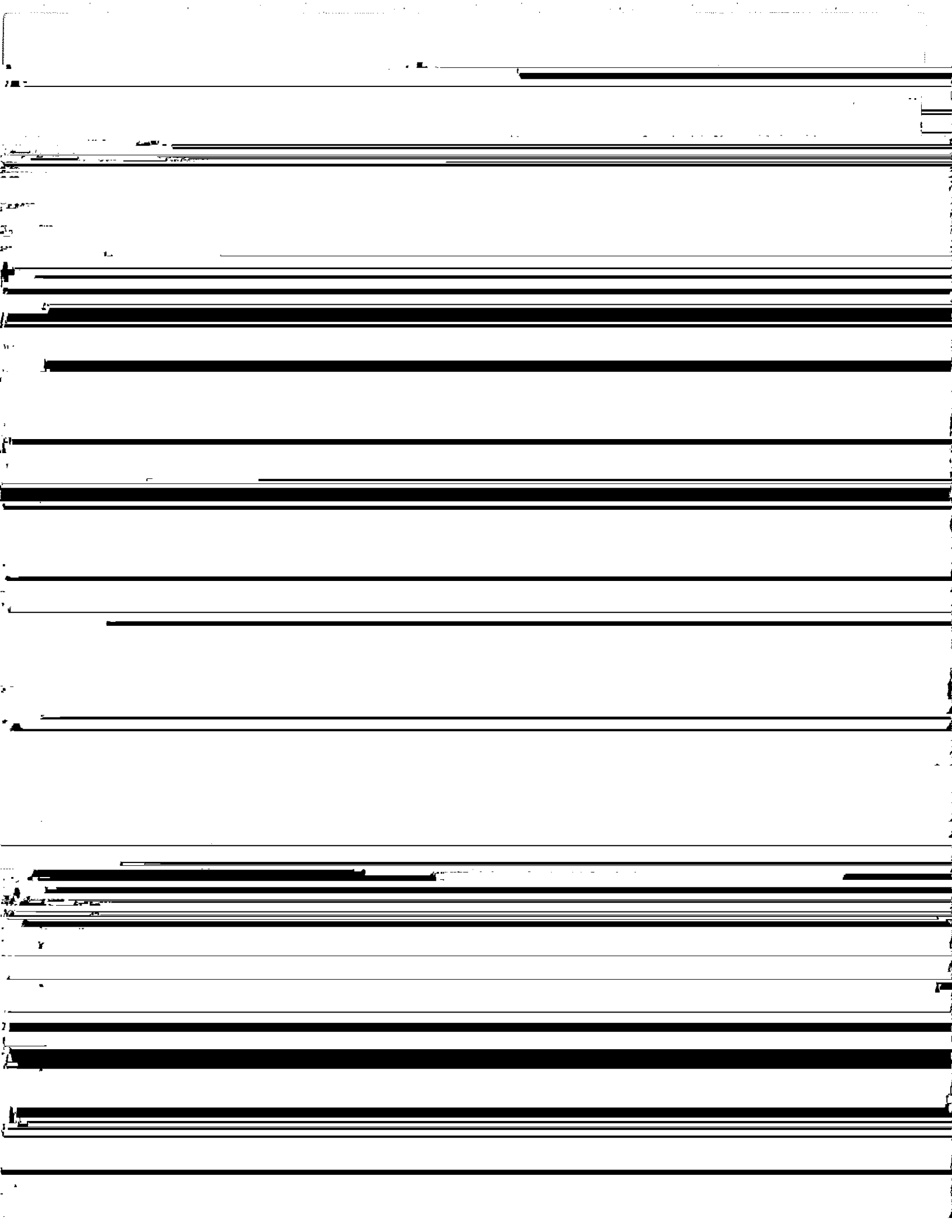
(3) The Prime Minister of Canada shall invite elected representatives of the govern-

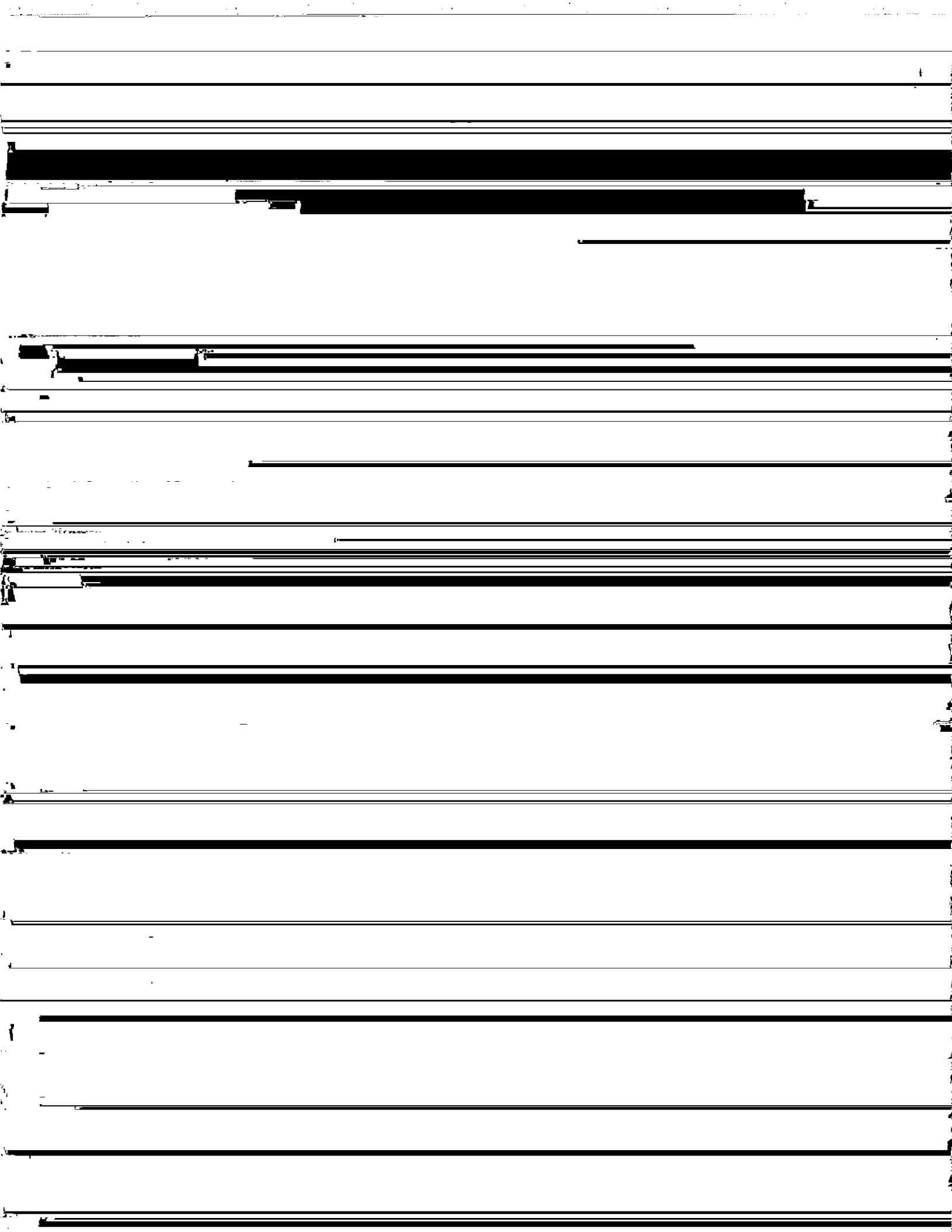
dum is required to be held under subsection 43(3), Part VI shall come into force as pro-

tion of the first mentioned thirty day

legislative assemblies of which would be

Canada consisting of





APPENDIX D



D-2

PART B

