

Constituent Assemblies: A Comparative Survey

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INTRODUCTION

SITUATING CONSTITUENT ASSEMBLIES AND

FOREWORD

Many Canadians have been



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SOMMAIRE

L'échec de l'Accord du lac Meech aura remis en question la légitimité du fédéralisme exécutif comme processus pour négocier des modifications constitutionnelles majeures au Canada. L'après-Meech a vu moult mécanismes alternatifs être proposés dont notamment le recours plus fréquent aux audiences publiques, la tenue de référendums et la création d'assemblées constituantes. Cette monographie aborde de façon spécifique ce dernier modèle participatif dans une perspective comparative.

Si la formule de l'assemblée constituante n'a jamais été réellement mise en pratique au Canada, il en fut tout autrement dans d'autres pays tels les Etats-Unis, l'Australie, l'Allemagne, la Suisse, l'Inde, le Pakistan, la Malaisie, les Antilles, le Nicaragua et la Namibie. Cette étude propose un survol historique du modèle d'assemblée constituante — vue comme instrument de modification constitutionnelle — et examine l'application qui a été faite de ce type de forum dans nombre d'Etats. Ces expériences sont ensuite soigneusement analysées, dans une optique comparative, sous différents angles: l'origine et les

modalités d'opération, les résultats obtenus et sur un plan plus général la

ABSTRACT

With the collapse of the Meese-Lee Amendment...



CONSTITUENT ASSEMBLIES:
A COMPARATIVE STUDY

With the collapse of the Meech Lake Accord has come a fundamental challenge to the legitimacy of executive federalism as a forum for negotiating major constitutional amendments. Many have expressed concerns about a constitutional amendment procedure that relies so heavily on prior private negotiations between the prime minister and the provincial premiers before subsequent ratification by Parliament and the provincial legislatures. In recent months, a number of alternatives have been suggested including more extensive public hearings, the use of referenda and the establishment of a constituent assembly.¹ This paper focuses on the last of these in a comparative perspective.

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According to the Wells proposal, a Constitutional Convention should be comprised of not less than 100 and not more than 200 members; of these, at least half should be directly-elected by the public. Of this group, half would be selected in equal numbers from each province and the other half on the basis of a proportional representation of

somewhat greater representation. There would be a separate pool for aboriginal peoples.

~~Every province that drafts constitutional changes under 11 of the 1982~~

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Section 1

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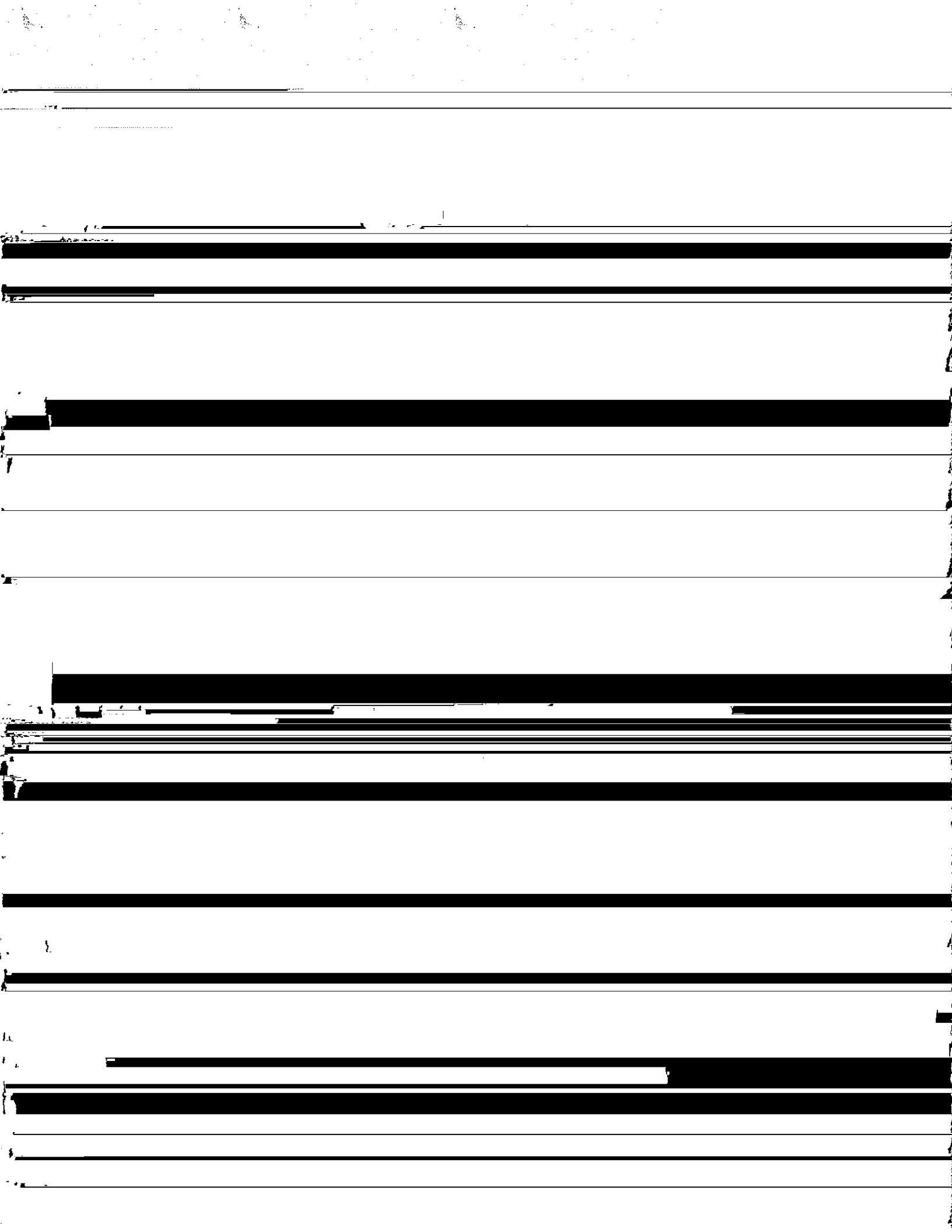
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of the Charter which has mobilized women, aboriginals and "third force" Canadians who see themselves in the constitution and demand that they be part of the process.¹³

However, the roots of the "democratic movement"

... it is not possible, but the

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place. Such analysis is beyond the scope of this paper. As a result, the comparative case studies should not be seen as part of a theory or even a complete description of constituent assemblies. Rather, they are designed to shed some light on the current debates about constituent assemblies in Canada and suggest

Block in 1987; and at Ottawa in 1990 about the Meech Lake Accord, which failed to receive ratification by the required number of provincial legislatures.

NEWFOUNDLAND

AUSTRALIA

In 1891 representatives of the British colonies in the Commonwealth

parliament. Because the Diet was a confederal body, the drafting committee of 23 members consisted mostly of the chiefs of the cantons and operated much

agreed to the partition of India into two states. India on 13 August 1947

national conferences in London in 1957-58 and 1960 to draft the new

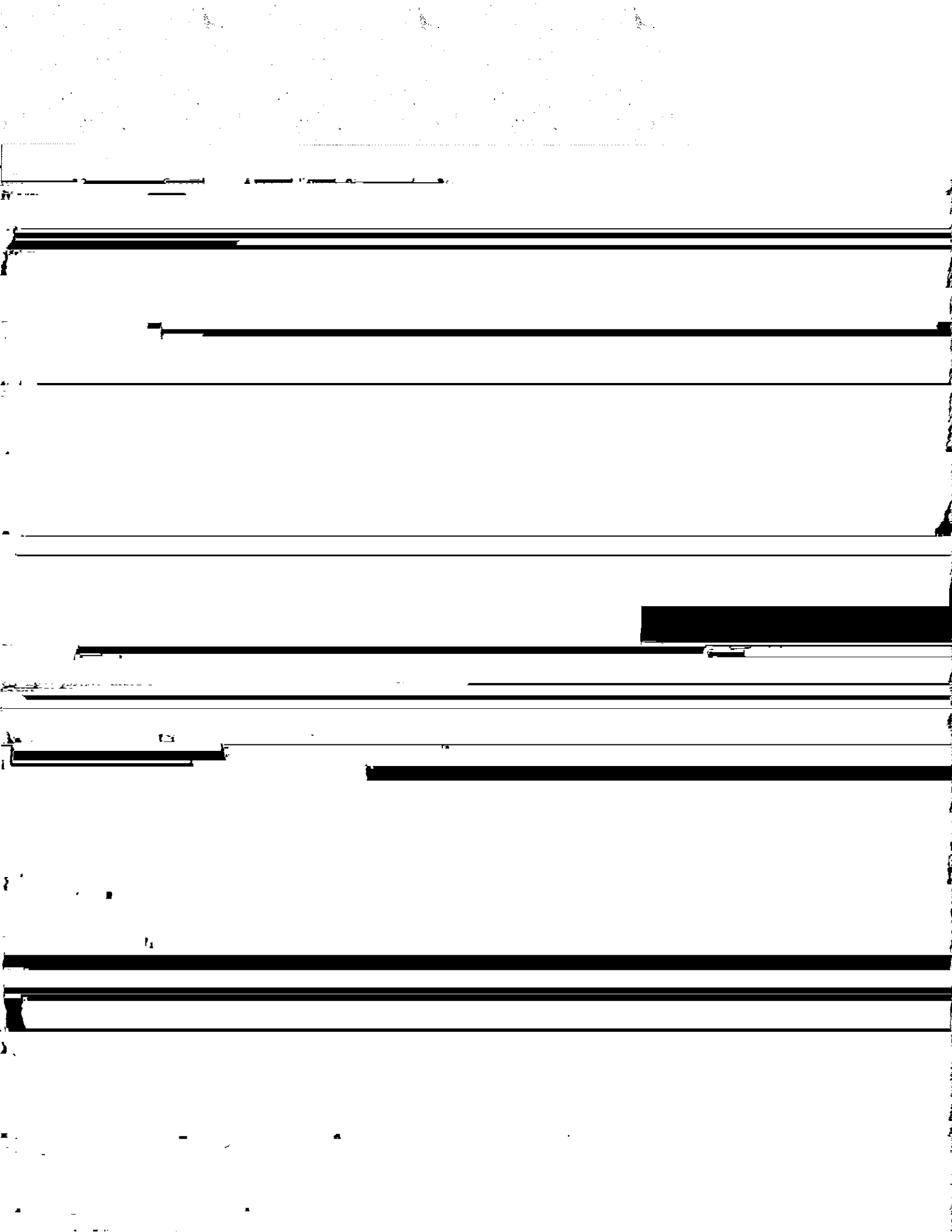
independence constitution

independence, the members of the constituent assembly were sworn in as members of the new national assembly of Namibia on 21 March 1990.

COMPARISON OF SIGNIFICANT FEATURES

Canada that has given rise to a number of proposals for a constituent assembly as one possible way of attempting to resolve the current difficulties. The clearest example of this rationale for such a body can be found in the circumstances that

Legislative Assembly, A. G. ...



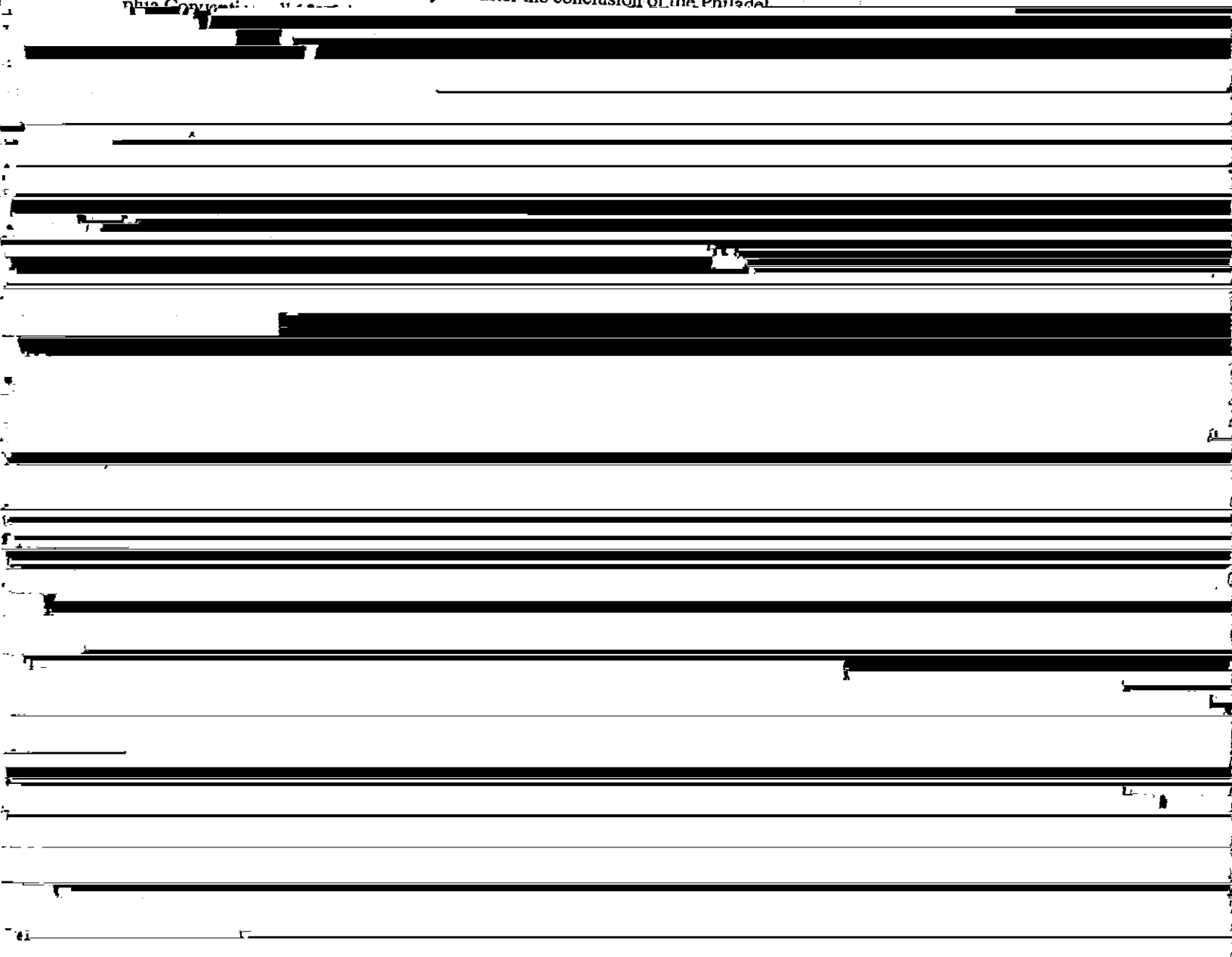
delegation would only make it more difficult to come to a consensus. In determining the composition of such a delegation, attempts were often made to include the various political interests in the legislature. In the case of Canada, for example, all of the provincial delegations to the Quebec conference contained members of both the Tory (Conservative) and Radical (Liberal) caucuses. The intent was that it would be easier to translate the results of a

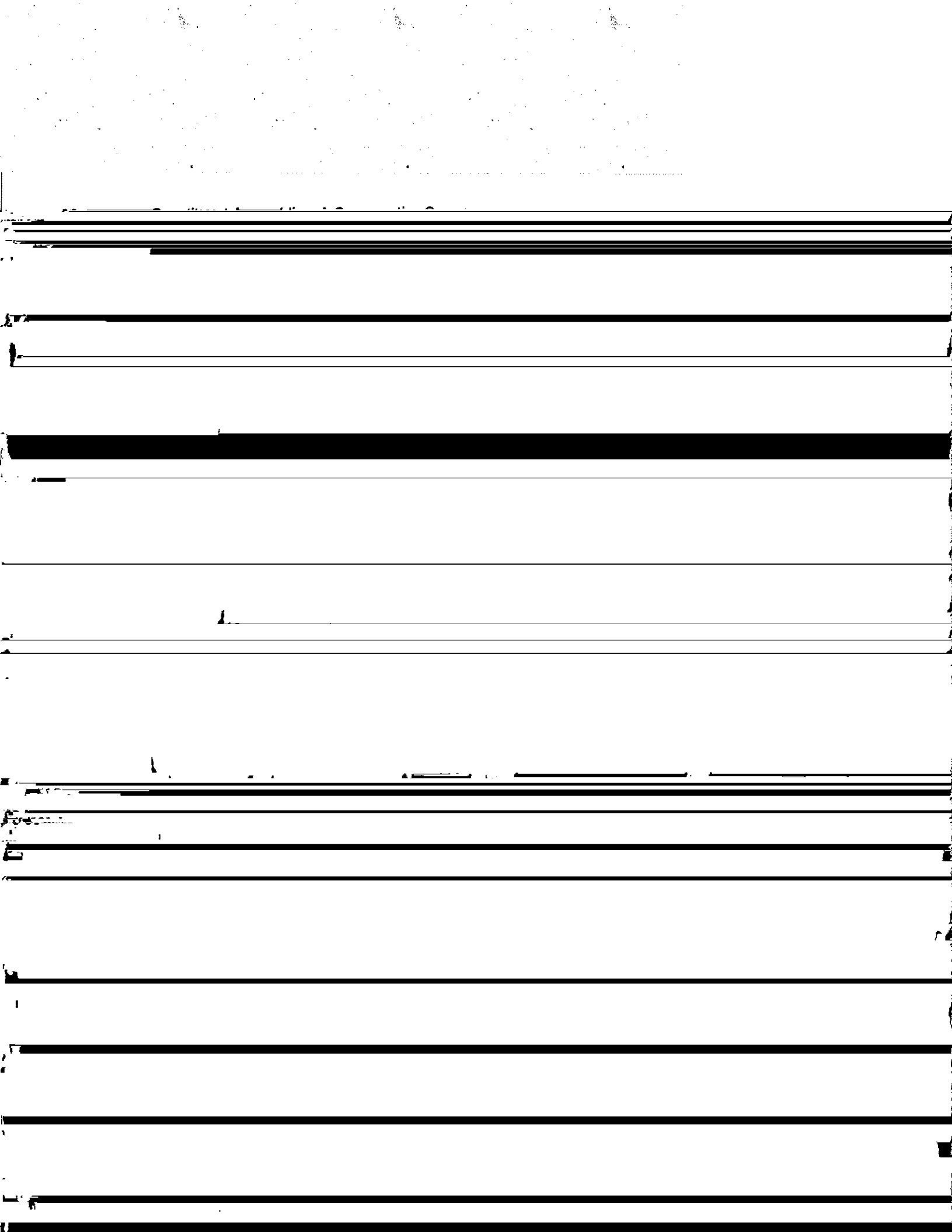
accepted that the political and economic elites who dominate the political process will exercise a similar dominance in the process of drafting or amending

In other instances, such as the Australian conventions of 1907 and 1911,

constitutional review and to identify the subject areas most in need of reform. The Task Force consulted representatives of all the cantons, the major political parties, the universities and nine major interest groups. A similar exercise was conducted in the Federal Republic of Germany in the 1970s when the

there was less sense of urgency than in the cases referred to above. Nevertheless, the Philadelphia Convention completed its work in four months of virtually continuous sitting (25 May to 17 September) and ratification of the new constitution by the required nine state conventions was achieved by June 1788. The new constitution came into effect in April 1789 by which time two more state conventions had ratified it. Shortly afterwards state conventions in the hold-out states, North Carolina and Rhode Island, ratified the new constitution so that by May 1790, less than three years after the conclusion of the Philadelphia Convention...





Constituent A

leadership role. It is significant that, in each process studied here, its success can be identified with either one individual or a group of them. In all cases, a few individuals dominated the proceedings of the assembly.

public to comment on the constitutional proposals being considered by the convention.

Something akin to public consultation was attempted during the early stages

drawn from one of the constituent governments. There are two prominent exceptions to this generalization, however.

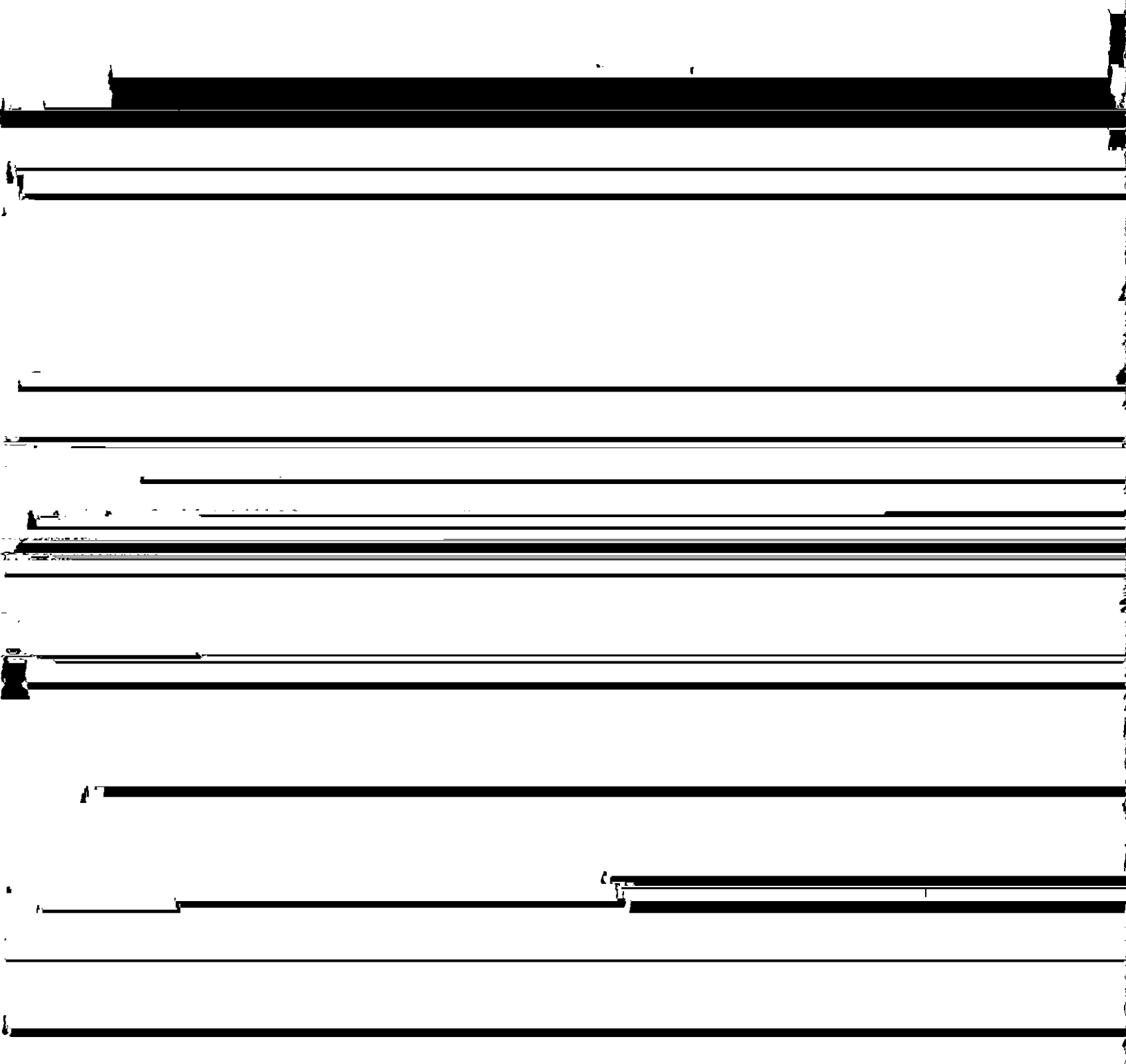
In India, a Secretariat of the Constituent Assembly was established at the very beginning of the process. Due to the tripartite nature of the assembly, the Secretariat was further subdivided into four secretariats:

- i) the Secretariat of the Union Assembly Group; that is, of the various assembly components in joint session. This secretariat had no

with the central government assuming 50 percent and the balance divided among the states roughly on the basis of population.

Presiding Officer

In all cases examined here, presiding officers were elected from the membership of the constituent assemblies, either unanimously or by substantial majorities. The selection of president was always made with an eye to choosing a person



aspects of the constitution-drafting process were initially undertaken by such committees as the Experts' Committee, Fundamental Rights Committee, Union Powers Committee and others.

Generally speaking, committees have been created to consider specific issues in greater detail and report to the constituent assembly.

Order of Business and Formal and Informal Business Methods

In general, the order of business has been determined by a committee or group of officers whose job it was to prepare the order of business for the consideration of the assembly. At the Philadelphia Convention a committee of three was elected by ballot of the delegates to carry out this function. The business of the

recorded, it would appear that delegates voted on individual articles of the constitutional text before voting on the draft as a whole.

DISPOSITION OF CONSTITUENT ASSEMBLY RESULTS

Process of Enactment in the Absence of a Final Draft

In the Australian example, some outstanding issues that remained unresolved

minutes and the

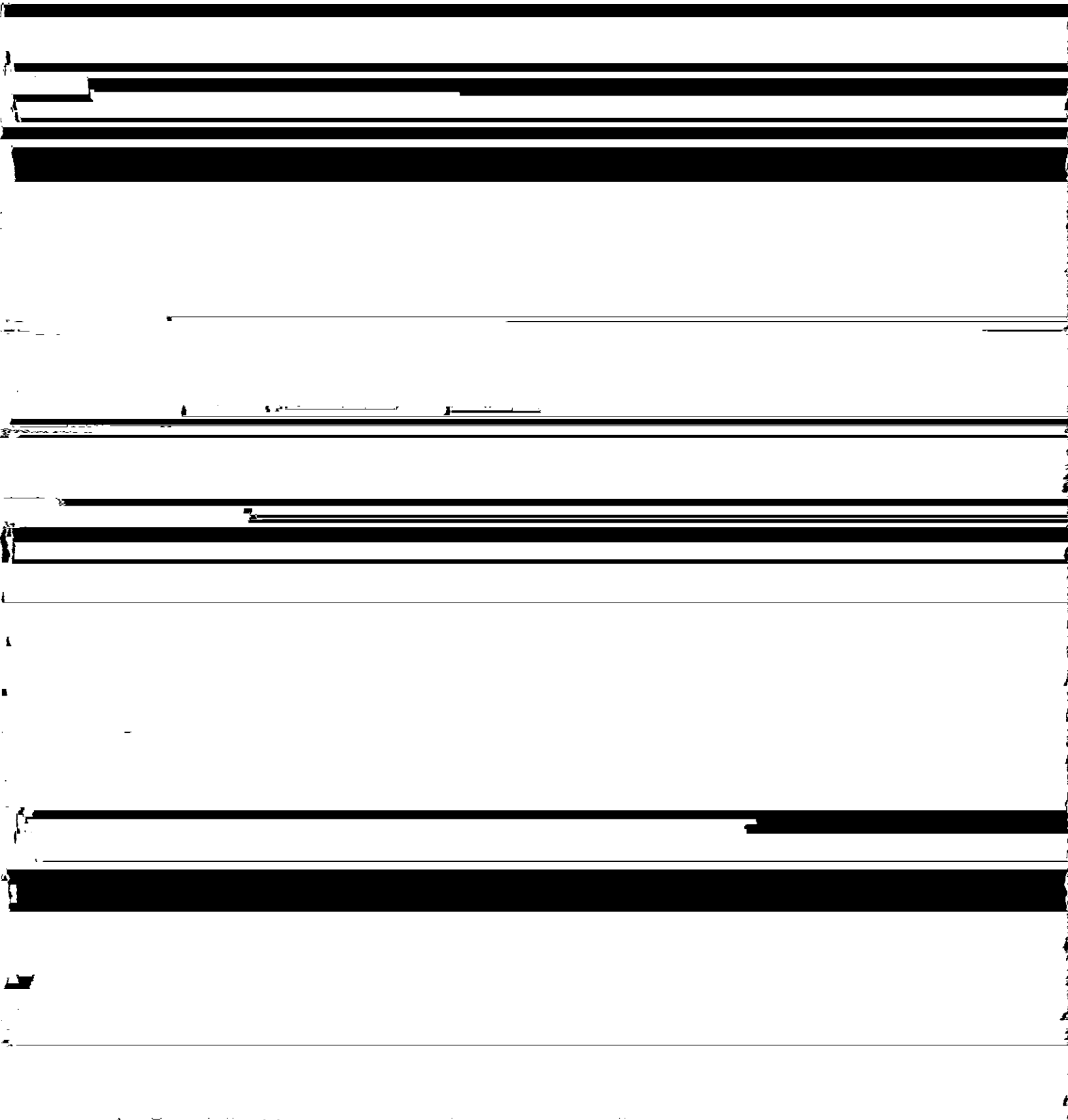
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misconstrued. Attention therefore is drawn to contextual factors that may have

which drafted a new constitution for Nigeria in 1979, were agreed on the need for a democratic, stable government and for the need to retain a federal structure of some kind. Similarly, the delegates to the constitutional convention that drafted the German Basic Law in 1948 were in agreement on the need to avoid the instability created by the Weimar constitution.

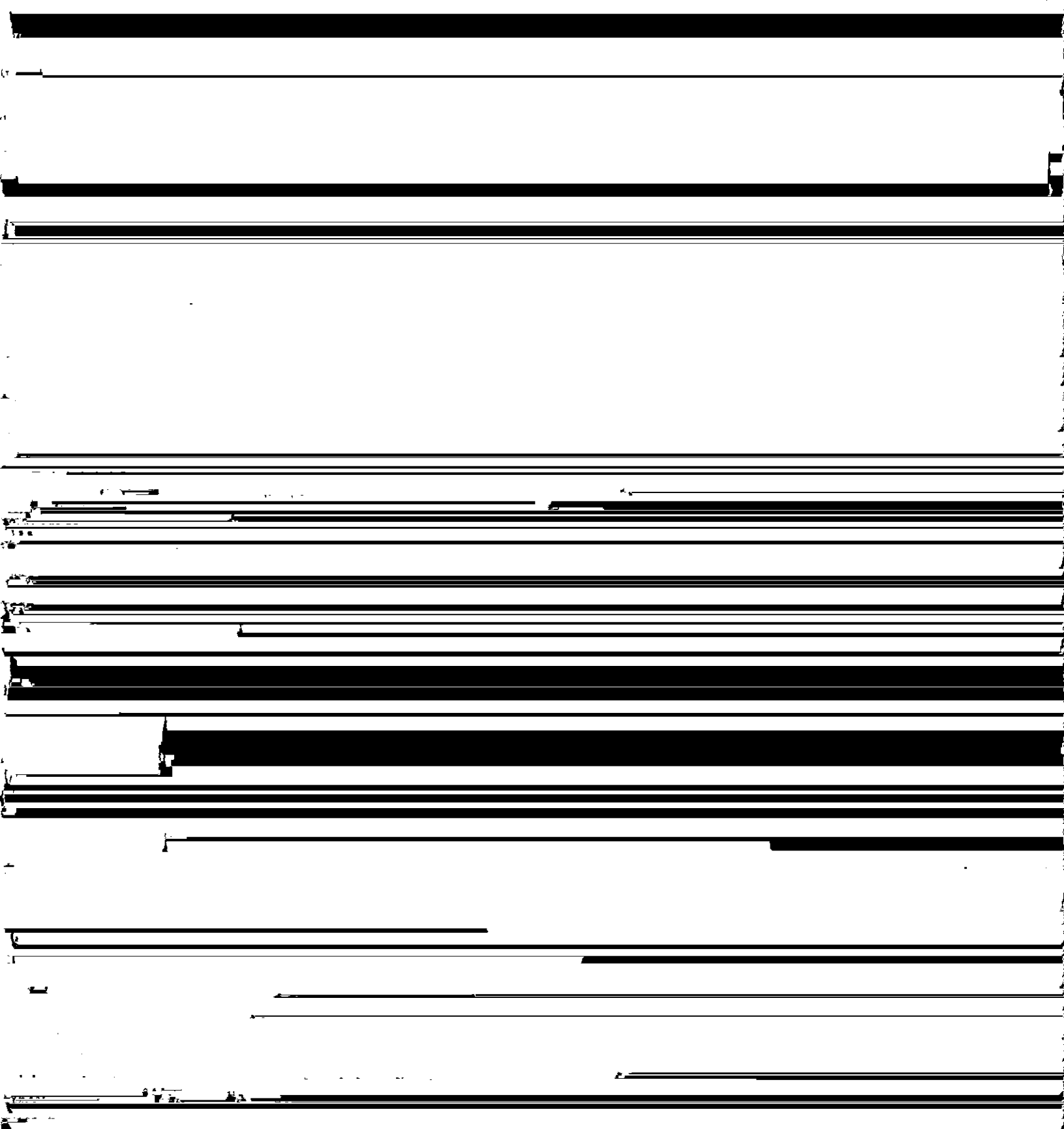
LESSONS FOR CANADA

The experience of other countries with constituent assemblies and constitu



pattern in the Parliamentary Council that drafted the German Basic Law. The Philadelphia Convention in the United States is often cited in Canada as a

salient, representation was assured on a more informal basis (e.g., in the many
parliamentary systems) or was "built in" to the territorial representation (e.g.



Constituent Assemblies: A Comparison

a constituent assembly that is not representative of all the country could serve to draft a text that would be the subject of further negotiation by political elites from all the provinces.

CHOOSING DELEGATES

The final issue with respect to the structure of the constitutional convention is how the delegates are to be chosen. The experience in other countries

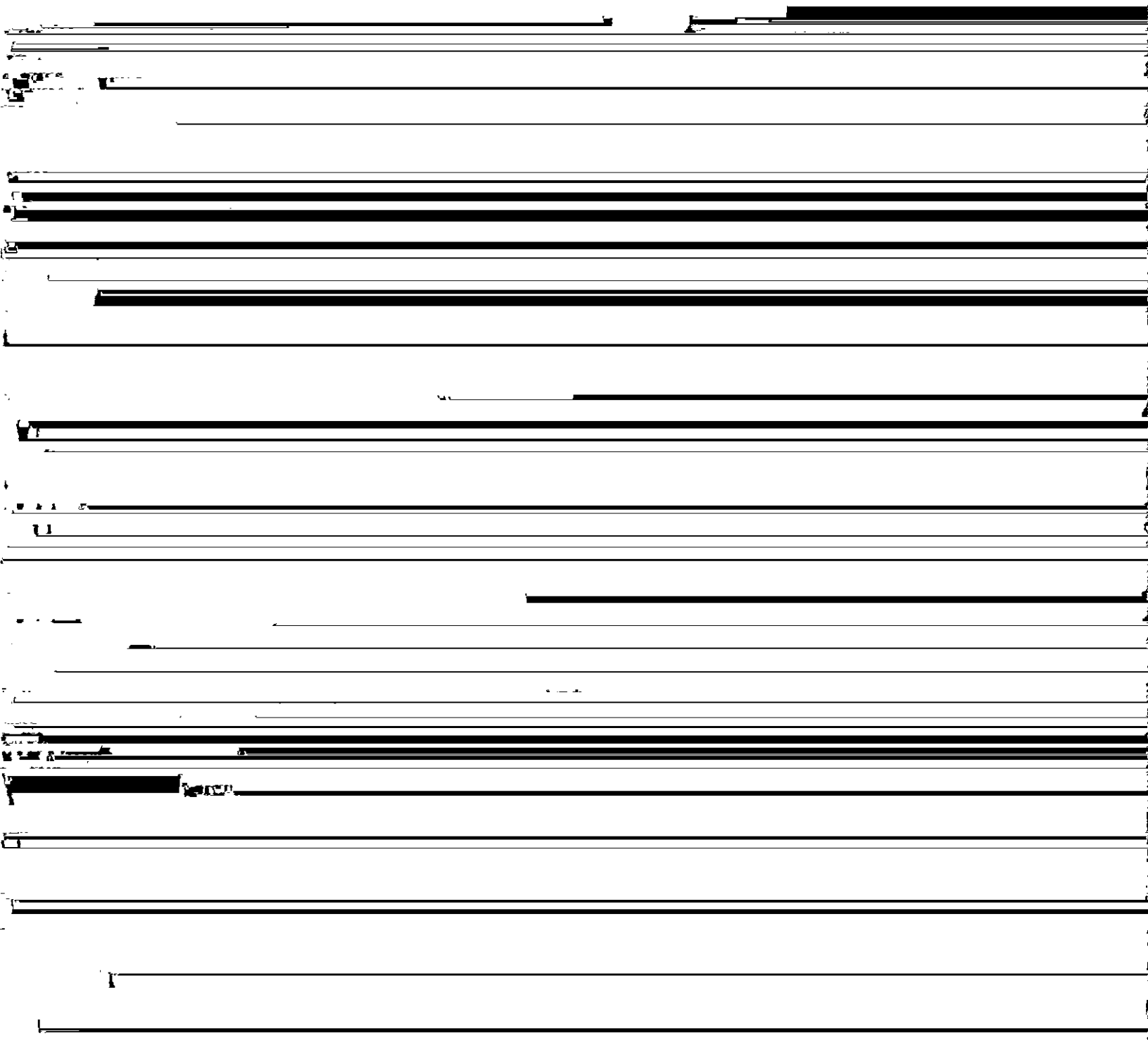
instances, however, such as the Philadelphia Convention and the German Parliamentary Council, each state delegation had only one vote and, therefore, the state position on each vote had to be thrashed out in advance within each state delegation.

CONSTITUENT ASSEMBLIES AND PROCEDURES OF CONSTITUTIONAL AMENDMENT

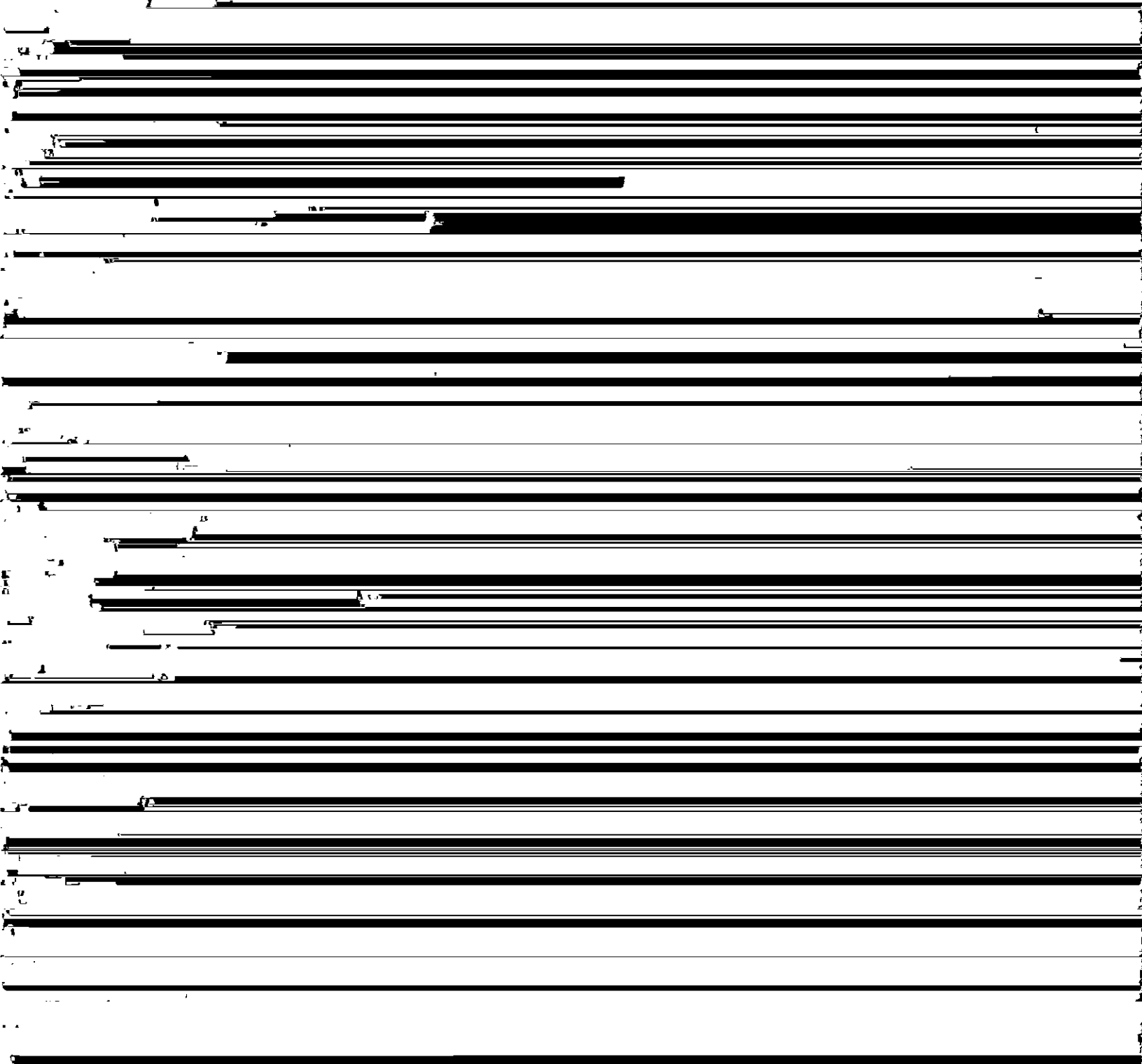
In his discussion of the applicability of a constituent assembly to the Canadian situation, Peter Russell argues that a constituent assembly can be a useful mechanism supplementing the existing constitutional amending formula.²⁴ Indeed, it might function as a more democratized form of negotiation in preparing proposals for legislative ratification. He goes on to argue that a constituent assembly would have to work within the context of the existing formula since it is highly unlikely that the Government of Quebec would agree to change the formula.

ignore or amend the recommendations of such an assembly without significant political costs.

SUMMARY AND CONCLUSIONS



establishment of federations or confederations where a group of independent
units have come together in a new union. Apart



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success of such mechanisms. Of particular significance seems to have been the existence of a general societal consensus (often in the midst of a perceived crisis

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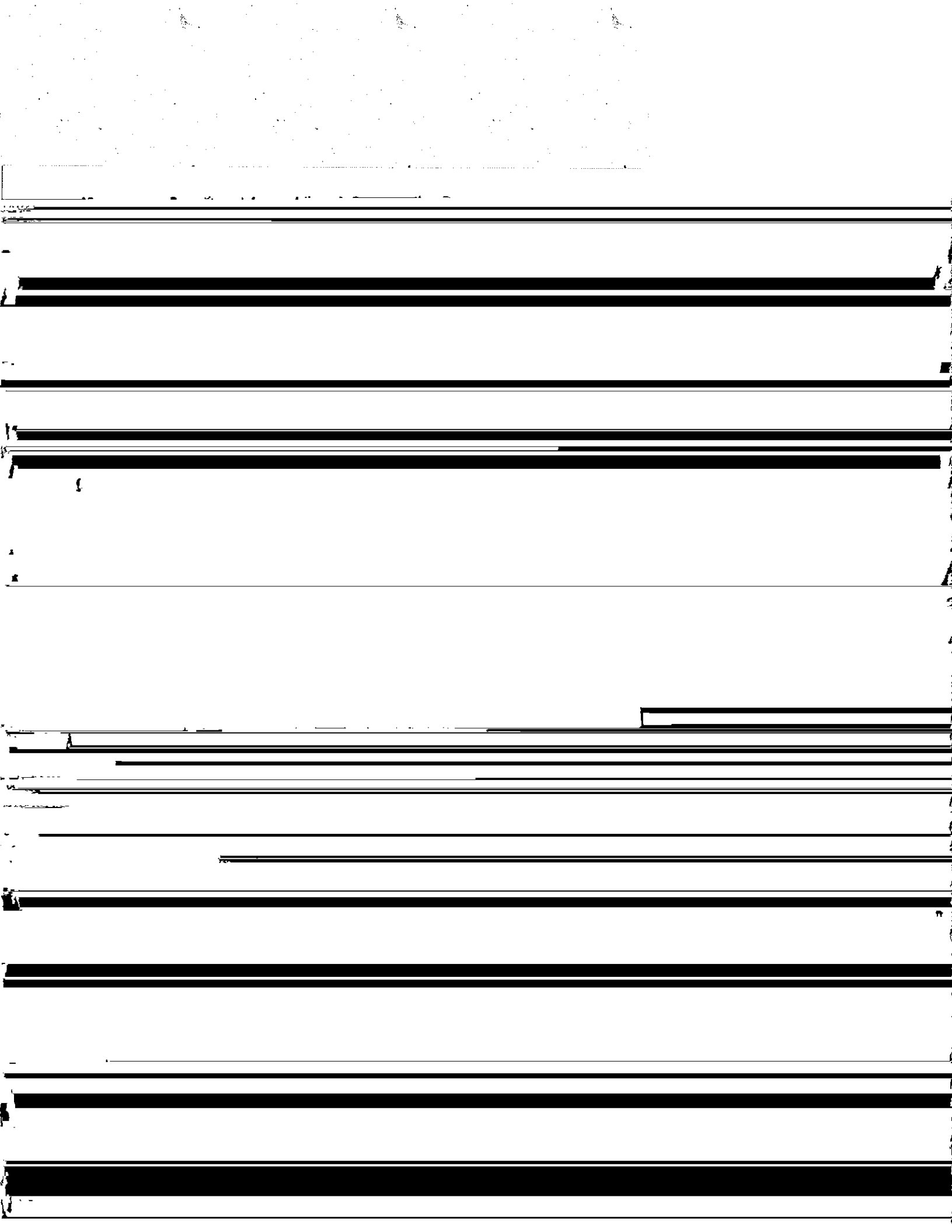
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Creighton, Donald, *The Road to Confederation* (Toronto: Macmillan, 1964).



Whitelaw, W.M. *The Quebec Conference* (Ottawa: Canadian Historical Association, 1966).

Whitaker, Reginald, *Federalism and Democratic Theory* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1983).

Williams, F.R.A., "The Making of the Nigerian Constitution," in Robert A. Goldwin and Art Kaufman (eds.), *Constitution Makers on Constitution Making: The Experience of Eight Nations* (Washington: The American Enterprise Institute for Public Policy Research, 1988), pp. 397-418.

APPENDIX