judges will work. The only question in my mind is: Who should appoint them, and what kind of checks should be in place so that the objective, the wise and the qualified will be enthroned to tell us what the Constitution is? I think that a group of senators having the responsibility to examine the qualifications of nominees would be a good idea. Whether the Senate should be appointed or elected is another sort of question.

• (1530)

My fear is that the Quebec input under the accord—which is a substantial input given to the premiers of Quebec—will balkanize the appointments to the Supreme Court of Canada and will encourage regionalism rather than the making of a Canadian society. There is room, of course, for that, but it is not a question of whose power it should be. We are afraid that there will be a dilution of responsibility. Unfortunately, we often look at the appointing power as the authority to whom we are accountable. If the triggering power resides in one province, it is unavoidable that the thinking of the appointed person will have a term of reference simply directed towards that province.

The culture of Canada is a national one; the distinct society of Canada is a national one; the fundamental characteristic of Canada is a national one. It is our submission that, in the ultimate analysis, we should test those perspectives of appointees.

Senator Stewart: My last question does not relate specifically to multiculturalism but is parallel to it. Under the Meech Lake Accord at least three judges will be nominated by the Province of Quebec. As a Nova Scotian I anticipate that the Province of Ontario will demand at least equal treatment. That does not leave very many for the rest of us, if you take either the four eastern provinces alone or the four western provinces alone. Does not the appointment process that is now being adopted tend not only to balkanize the court but to have the effect of concentrating this constitutional law-making body into two provinces?

Mr. Binavince: Senator, I, personally, share that view. I think if one looked at what is happening to the Supreme Court of Canada today one would see that that court is becoming more and more a constitutional public law court because of its power to select the cases that it will hear. That court considers issues of national importance and allows only such cases to be appealed. On the other hand, the direction of the appointment of judges is going towards the provincial powers. I am not so sure that that is a wise move. It is a step backwards.

Ultimately, the increasing tendency of our judicial development will be that the provincial courts will become supreme courts in their own right in certain provincial aspects of the law, and it is likely that many of these cases will not ever reach the Supreme Court of Canada. Only cases of national importance that should be decided by nationally conscious judges should go to the Supreme Court. That is my view.

Mr. Corn: Mr. Chairman, I should like to mention that the Canadian Ethnocultural Council advocates both the appointment of the Senate and the appointment of the Supreme Court of Canada. We, however, are not politicians; we are not partisan; we would like to leave it to the politicians whether the Senate be elected or appointed. That is their problem, not ours. We want only one thing, please: Appoint more people from ethnocultural backgrounds both to the Senate and to the Supreme Court of Canada. That is all we want.

The Chairman: Thank you, Mr. Corn, but I think that Mr. Binavince indicated that he was answering on a personal basis as a constitutional expert and was not necessarily binding the Ethnocultural Council to his answers. However, we note your comment.

Senator Frith: Gentlemen, my question arises out of Senator Stewart's earlier line of questioning. I am not quite clear on your position with respect to the matter of "distinct society." You are familiar with the reference books that deal with words that are judicially defined. One can find out from such reference books what words and phrases have actually been defined by judges. The word "society," apparently, has never been in any context the subject for judicial definition in Canada. As I pointed out on another occasion, when I tried to find judicial definition of the word "society" I could find nothing between the words "soap" and "sodomy." I thought I heard you say that the building of a constitution and the definition of words of this kind was a matter for the people; yet, in your Executive Summary I note that the Canadian Ethnocultural Council wishes "to have the term 'distinct society' defined in the Accord." Is there a difference between the two of you on this subject?

Mr. Corn: We were speaking ostensibly about "distinct society." I would put it briefly. We do not believe that we ethnocultural people or English people should describe what is the distinct society of the French Canadians. I believe that they should do it.

Senator Frith: You believe what?

Mr. Corn: I believe that the French Canadian people, the Quebeckers, should do it. We know certain aspects of their society; we know that their laws are based upon the Napoleonic Code while ours are based on case law; we know that they have a different language, and so on. But rather than try to describe what we feel is their distinct society, we would say that they should do so.

In the Throne Speech and elsewhere reference is made to our national life reflecting the vital and distinctive nature of Canadian society. Everybody is using distinctiveness. We, as an ethnocultural group, believe that we are distinctive. I am Czech by origin—I am something special! But who can say what is my distinctiveness? We believe that the Quebeckers should try to establish what is distinctive in their case.

Senator Frith: You will remember that the proposed Constitution amendment states that:

> The Constitution of Canada shall be interpreted in a manner consistent with
>
> (a) —

and I will come back to that, and