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**Forever Amber:
The Legacy of the 1980s for the
Ongoing Constitutional Impasse**

Thomas J. Courchene

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Queen's University
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CONTENTS

<i>Foreword</i>	v
<i>Sommaire</i>	vii
<i>Abstract</i>	ix
I. Introduction	1
II. Domestic Politics and the Constitutional Framework	2
Trudeau's Second Coming	2
The Canadian Economic Union as Catalyst	4
Mulroney I: National Reconciliation	6
Rekindling Cooperative Federalism	7
The FTA	8
Meech Lake and Tax Reform	8
Mulroney II: Drifting Into Country Warp	9
The Denouement of Meech	9
Fiscal-Driven Decentralization	10
FTA Implications	11
Institutions in Decline	12
Native Issues	13
III. Global Determinism	14
IV. Conclusion: The 1990s and the Constitution	15
<i>Notes</i>	20
<i>References</i>	22
<i>Appendix Table</i>	25

FOREWORD

This paper by Tom Courchene was originally prepared for and presented at the University of Saskatchewan Conference, "After Meech Lake," sponsored by the College of Law and the Department of Political Studies, held in Saskatoon, 1-3 November 1990.

The paper discusses the political and economic developments during the 1980s as a backdrop against which Canadians now have to address our current constitutional impasse. Tom Courchene looks broadly at the developments of the past decade, examining a wide range of forces internal and external that impinge on federal-provincial, interprovincial and citizen-state relations. The analysis covers the terms of three federal governments: the last term under Prime Minister Trudeau, 1980-84 and the two terms of Prime Minister Mulroney, 1984-88 and 1988 to the present. Among the political, social and economic forces which he examines are the impact of the Charter emphasizing non-territorial and pan-Canadian issues in Canadian political discourse, and the impacts of global economic interdependence and of the Canada-U.S. Free Trade Agreement upon the Canadian economy and federal system. He then concludes by discussing how these forces are likely to shape the challenges and choices affecting Canada in the 1990s.

Because of the relevance of the paper to the current public discussion of Canada's constitutional future, we are pleased to make his paper available to a wider public through publication in our *Reflections/Réflexions* series. The contributions to this series present the personal thoughts and arguments of their authors on a range of topics relating to federalism. It is intended that this series will place ideas into the public forum on a wide variety of public issues affecting our future development as a nation and a federation.

Tom Courchene is currently Director of the School of Policy Studies at Queen's University, a post that he assumed in 1988. Prior to that he had served as a Lecturer, Assistant Professor, Associate Professor and Professor of Economics at the University of Western Ontario, 1965-88. He was also Chairman of the Ontario Economic Council 1982-85, a Visiting Professor at l'École nationale d'administration publique (ENAP) in Quebec, and held the Robarts Chair of Canadian Studies at York University, 1987-88. He has been a prolific author, editing eight books, authoring 21 books and monographs, and writing over 110 articles. He was elected to the Royal Society of Canada in 1981 and has been a member of the Economic Council of Canada since 1988.

Ronald L. Watts
Director
November 1990

SOMMAIRE

En dix ans, la société canadienne est devenue quasi-méconnaissable. Les institutions et compromis qui, depuis un siècle, ont servi de base à ce pays apparaissent désormais surannés, voire même inacceptables. Sur le plan politique, les institutions et partis politiques à caractère national sont en crise. Qui plus est, la Charte canadienne des droits et libertés a eu progressivement pour effet de privilégier le discours de types non-territorial et pan-canadien au détriment du discours fondé sur la problématique régionale traditionnelle ou celui axé sur les relations fédérales-provinciales. Au niveau économique, le début des années '80 aura vu le gouvernement central donner dans l'anti-américanisme avec la création du Programme énergétique national (PEN) et de l'Agence d'examen de l'investissement étranger (AEIE); or, ceux-ci n'ont pas survécu à la signature de l'Accord de libre-échange entre le Canada et les Etats-Unis (ALE). Cependant, nos chefs de file en macro-économie tirent parti présentement de nos rapports commerciaux avec les Etats-Unis de telle façon que l'ALE pourrait s'avérer, au lieu de l'Occasion commerciale espérée, un véritable cauchemar économique. Dans l'intervalle, la dynamique continue de la mondialisation est en voie de saper la puissance séculaire de l'Etat-nation; de fait, le degré d'autorité de l'Etat-nation est à la fois trop faible ou trop élevé avec, pour résultat, une gestion gouvernementale on ne peut plus fluctuante. Tel est l'héritage des années '80. C'est au regard de ce contexte que les Canadiens doivent tenter de résoudre l'impasse constitutionnelle à laquelle le pays fait face actuellement. Si le défi à relever semble à première vue insurmontable, c'est, pour une large part, en raison de l'incapacité présente du gouvernement central à pouvoir répondre aux attentes des Canadiens.

ABSTRACT

From the perspective of 1980, we are almost unrecognizable as a society. The institutions and compromises that carried us through our first century are apparently no longer in vogue, let alone tolerated. At the political level, our national institutions and national political parties are in crisis. In terms of the federal system, the traditional regional and federal-provincial discourses are, thanks to the Charter, being replaced by non-territorial and pan-Canadian discourses. In the economic sphere, the anti-Americanism of the National Energy Program (NEP) and Foreign Investment Review Agency (FIRA) of the early 1980s have now been swept away with the Canada-U.S. Free Trade Agreement (FTA); our macro-economic managers have latched on to a policy course that is turning the FTA opportunity into an economic nightmare. Meanwhile, the ongoing process of globalization is eroding the traditional powers of the nation state: the span of control of nation states is at the same time too narrow and too broad so that functions are being passed both upward and downward. This is the legacy of the 1980s and it is also the backdrop against which we Canadians must address our current constitutional impasse. Moreover, the challenge is all the more daunting because this time around there is no federal largesse to buy our way out of the problem.

FOREVER AMBER: THE LEGACY OF THE 1980s FOR THE ONGOING CONSTITUTIONAL IMPASSE

I. INTRODUCTION

With the victory of the NO forces in the 1980 Quebec referendum and with Trudeau's promise of "le fédéralisme renouvelé," Canadians and our governments had every expectation that the constitutional signals were finally flashing green. And in an important sense they were. In 1982, nine provinces and Ottawa found a way through the constitutional intersection. And with the historic 1987 compromise, the way was set to bring Quebec across the constitutional threshold as well. But apparently this is not the Canadian way. We seem to have an incredible ability to ensure that the future of our federation remains continually in the balance. Thus, with "assistance" from all players we engineered Meech Lake through a highly sophisticated kamikaze exercise. Then, in those heady days in Quebec immediately following the Meech debacle, it appeared the signals were flashing red: the momentum and the societal cohesion in Quebec pointed toward a quick exit. However, this is apparently not the Quebec way either. Kanesatake and Kahnawake burst Quebec's sovereignty euphoria, at least for the near term, and combined with the recession and internal politics associated with Quebec's Parliamentary Commission imply that Quebec will not likely be able to forge a unified non-partisan position. Hence, as we enter the 1990s we are back, albeit with a more complicated agenda and process, at our familiar constitutional crossroad. Moreover, the signals are also looking increasingly familiar: forever amber.

With this as backdrop, the purpose of this paper is to review the 1980s constitutional record both in its own right and in terms of what it might portend for the 1990s. I am giving a very broad definition to the "constitutional record," specifically those forces internal or external that impinge on federal-provincial, interprovincial or citizen-state relationships. The principal background material is an appendix table that records and assesses selected events in the 1980s in terms of their implications for this triad of relationships.

In more detail, part II focuses on the domestic political agenda and its impact on the institutional and constitutional framework. The analysis will be conducted in terms of the three political "mandates" in the 1980s — Trudeau's "Second Coming" and the two Mulroney administrations. Necessarily, this will

draw on existing treatises, e.g., Milne (1986) and Simeon and Robinson (1990). Part III then deals very briefly with the way in which developments in the global economy are likely to influence the evolution of Canadian federalism. In the concluding section these various forces are brought together in order to isolate selected challenges and choices facing us in the 1990s.

II. DOMESTIC POLITICS AND THE CONSTITUTIONAL FRAMEWORK

TRUDEAU'S "SECOND COMING"

From the perspective of the 1977 block-funding of the established programs and the Liberals' very generous constitutional proposals of 1978 (which, incredibly, the provinces rejected), Trudeau's "Second Coming" represented nothing less than a complete philosophical reversal. In Trudeau's own words, from a CTV Christmas, 1981, interview:

I think that the turn of the pendulum or the swing back of the pendulum [toward centralism] happened probably sometime between '78 and '81. I don't like to be too partisan, but I think that we had that short period of the Conservative party that was preaching the community of communities and I think it brought forth rather clearly when even Mr. Clark couldn't reach an agreement with Alberta, after he'd given up Loto Canada, after he'd given away the offshore and after he'd been making many other promises to decentralize to that community of communities, I think it became obvious to more and more people that that was going too far and then I began to feel that I had support for stopping the pendulum (quoted in Milne, 1986, p. 23).

And stop the pendulum he did. Virtually the entire Liberal agenda — the National Energy Program (NEP), the intentions to strengthen the Foreign Investment Review Agency (FIRA)¹ and Canadian ownership, the *Constitution Act, 1982*, the termination of the revenue guarantee and the "re-conditioning" of post-secondary education transfers, the 1984 Canada Health Act, etc. — can be interpreted as deliberate initiatives designed to strengthen the federal presence, power and visibility not only vis-à-vis the provinces and regions but also with respect to the forces of "assimilation and integration" emanating from south of the border.

Whether one refers to this as "defensive expansionism" following Aitkin (1959) or as the Liberals' "new federalism" (Milne, 1986) or the "nationalist-centralist-interventionist agenda" (Courchene, 1989), the implications were profound. At the highest level of generalization, by alienating the regions and provinces (the west with the NEP and the Canada Health Act, and Quebec with the constitution), the Americans (intended changes in FIRA and the discriminatory features of the NEP) and the business community (galloping deficits and

the fear that Canada would, for its anti-U.S. policies, be caught in any U.S. protectionist wave), Pierre Trudeau became, indirectly at least, the "author" of both Meech Lake and Free Trade. Phrased differently, it was virtually inevitable that the Trudeau agenda would trigger powerful countervailing forces. And for the constellation of interests associated with the Free Trade Agreement (FTA), the Trudeau policies were overturned with a vengeance, i.e., well-nigh "constitutionalized" in the Canada-U.S. Free Trade Agreement. But other aspects of the "new federalism" have been anything but overturned. Foremost among these is the Charter which, as Alan Cairns noted as early as 1979 with respect to an early version of the Charter as proposed by the Trudeau government, has not only "democratized" the constitution (by "entitling" new groups such as natives, the disabled, linguistic minorities, women, multicultural groups) but has also created a "non-territorial" or pan-Canadian component to constitutional federalism:

At a more profound political level...the Charter was an attempt to enhance and extend the meaning of being Canadian and thus to strengthen identification with the national community on which Ottawa ultimately depends for support. ...The resultant rights and freedoms were to be country-wide in scope, enforced by a national supreme court, and entrenched in a national constitution beyond the reach of fleeting legislative majorities at either level of government. The *consequence, and a very clear purpose, was to set limits to the diversities of treatment by provincial governments, and thus to strengthen Canadian as against provincial identities*. Rights must not be dependent on the particular place where an individual chooses to reside (Cairns, 1979, p. 354, emphasis added);

The language of rights is a Canadian language not a provincial language. If the Charter takes root over time the citizenry will be progressively Canadianized (Cairns, 1984).

The challenge the Charter poses to the traditional operations of Canadian federalism was highlighted by my colleague John Whyte when he noted that, in a charter-based society, citizen-state relations become "systematized, centralized, uniform, constant, unilateral and direct" while in a federal system they are "diverse, filtered, diluted, subject to mediation and complicated" (cited in Simeon and Robinson, 1990, pp. 281-2).

Ironically, however, the Charter is fundamentally offside with respect to the Liberal agenda (although perhaps not with Trudeau's personal philosophy). It is inherently "republicanizing" in the sense of undermining aspects of the essence of parliamentary government by introducing a checks-and-balances component (the courts) fully into our governing machinery. More intriguingly, it is inherently "Americanizing" in the important sense of moving us closer to embracing aspects of the individualism underlying the American creed.² Seymour Martin Lipset was correct, in my view, when in a recent *McLean's* interview he argued that the Charter, not the FTA, has the greater potential for

bringing us into the American orbit and ambit. Evidence of this can be found in the Charter-influenced position adopted by Premiers Wells, Filmon and McKenna in the countdown to Meech to the effect that no province should have special powers.³ This is quintessentially American, not Canadian, since asymmetric powers have long characterized our federation and important aspects of asymmetry are central to the *Constitution Act, 1867*.

Meech Lake may have been the first attempt to adjust to the insertion of the Charter into our governance structure. But it will not be the last, and before full accommodation is achieved the Charter will have touched deeply many aspects of the Canadian psyche including, for example, executive federalism (Courchene, 1990a). On this score, David Milne raises an issue or puzzle that promises to be an academic gold mine for historians and political scientists alike: why should an essentially conservative people, with little inclination to distrust governments on principle, have decided to bypass governments and entrust so many of its rights, especially language rights, to judges and not to politicians? (Milne, 1986, p. 52).

The Canadian Economic Union as Catalyst

What was the conceptual and/or operational catalyst that triggered this 1980-84 agenda? The answer, I think, was Chrétien's 1980 "Pink Paper" (*Securing the Canadian Economic Union in the Constitution*).

To attempt to demonstrate this, it is critical to recognize that what was novel about the 1980-82 constitutional round was the inclusion of the concept of the Canadian economic union (henceforth, CEU). Almost immediately, the nature of the bargaining process altered dramatically. Most of the provinces (or perhaps more correctly the provincial premiers) had long been viewing the patriation process as the vehicle by which to enhance their powers. This was especially the case in the spring of 1980, given the victory of the NO forces in the referendum and Trudeau's promise of a "renewed federalism." But the CEU had such potential for centralization (see Simeon, 1982-83) and it was so well received by Canadians that the provinces suddenly realized that they would be lucky to escape from the process with their *existing* powers intact, let alone any enhanced powers.

The provinces found themselves in a truly awkward position: to argue their side they had in effect to challenge the free flow of goods, services, capital and people across provincial boundaries. Not surprisingly, Trudeau made full use of the provinces' dilemma. On the opening day of the televised constitutional conference in the fall of 1980, after each premier had his say, it was the Prime Ministers' turn:

...if we look at the agenda...there are eight items of the twelve where the provinces are either attempting to increase their powers or to reduce the federal ones, and this...in the most decentralized federal form of government in the world. Now

against these eight items...where the provinces are asking for more power for themselves there is one item, the one called Powers over the Economy [effectively, the CEU issue] where, respectfully we are not asking for more powers for ourselves, the federal Canadian government, we are just asking that the constitution reflect what all of us wish and many of you said you wished — to have in Canada a common economic market (Trudeau, 1980, p. 95).

Critical to the constitutional process was that Ontario immediately threw its support behind the federal proposals. History may record this as a nation-building, Canada-first initiative on Ontario's part. However, it is also the case that the introduction of a thorough-going CEU was very much an "Ontario first" policy (Hudon, 1983; Courchene, 1989). Recall that this was the very time frame of the projected \$210 billion of mega-projects, many of them energy related. A full-blown CEU (e.g., no purchasing preferences on the part of the Alberta government) would ensure full access by Ontario industry to these projects. Moreover, if this could in addition be combined with an overall "buy Canadian" preference, then the benefits to Ontario would be even more significant. Hence, it is perhaps not surprising that Ontario's Industry and Tourism Minister, Larry Grossman, argued just this (i.e., a CEU and a "buy-Canadian" preference) in *Policy Options* in the fall of 1980 and his department issued a formal Ontario position paper (the so-called "Purple Paper") to this effect in 1981. In effect, this would represent at long last the full realization and culmination of Macdonald's 1879 National Policy. And the timing could not be more opportune. Moreover, this Ontario-Ottawa symbiosis meant, for example, that intentions designed to put more teeth into FIRA would find Ontario government support, and so on.

To be sure, the CEU acted principally as a catalyst in all of this, since Trudeau agreed to *enshrine the right to impede* to the CEU (preferential hiring for Newfoundland's offshore and the right to mount indirect taxes in respect of natural resources for the west) and, more generally, backed off the implementation of provisions like enhancing the trade and commerce power in order to cement the constitutional accord in the fall of 1981.⁴ Nonetheless, in the context of the 1980-82 environment, the so-called "people's package" (economic rights via the CEU and political rights via the Charter) provided a powerful rationale not only for the constitutional process but also for the entire "new federalism" agenda. For example, Milne offers the following comments with respect to the NEP:

...if the object of the Trudeau government's constitutional strategy was to throw up guarantees and symbols against separatism and regionalism that would only subtly consolidate federal power, its National Energy Program was more directly and boldly centralist. Steeped in intoxicating nationalist rhetoric that challenged both foreign multinationals and "selfish" provincialism in the name of Canadian "patrimony," energy security, and pricing fairness, the policy's primary purpose

was the strengthening of the federal state. Just as it had done during the battle over the constitution, the government served up nationalism as a powerful doctrine for rebuilding federal power. Once again, the theory was advanced that the "people's" interests could only be furthered by promoting the Canadian state, by celebrating Canada as it might be expressed through federal instruments and agencies (Milne, 1986, p. 70).

The link can also be made in the fiscal federalism area as well. Under the guise of a "fiscal imbalance" (i.e., the federal government was shouldering too large a share of aggregate government deficits), Ottawa pared back the value of the Established Programs Financing (EPF) grants by the two tax points that were part of the 1977 block-funding arrangements (and were designed to compensate for the termination of the revenue guarantee). At roughly the same time Ottawa moved, again unilaterally, to "re-condition" the 1977 EPF transfers and began to argue that the provinces were "underfunding" post-secondary education. This approach of going over the heads of the provinces and appealing directly to Canadians reached its apex with the 1984 Canada Health Act: in effect, the federal government adopted the role of "guarantor" and, in some areas, ultimate arbitrator for aspects of the provincially-run, health-care programs (Courchene, 1984).

Finally, the Liberals' approach to bilingualism and biculturalism whereby English- and French-speaking Canadians can feel at home anywhere in Canada resonates much more with the CEU and the Charter than it does with the "collective-rights" approach to language and culture espoused by successive Quebec governments.

However one interprets this constellation of initiatives, it is clear that they represented a dramatic shift in both the traditional attitudes and traditional structures of the federation. As Breton (1985) notes, parliamentary government in Canada accommodates and even encourages these massive pendulum swings. Enter the Mulroney Tories.

MULRONEY I: NATIONAL RECONCILIATION

On 4 September 1984, Canadians resoundingly rejected the "new federalism," admittedly with some help from Prime Minister John Turner. As impressive as the magnitude of the Tory sweep (211 out of 282 or three-quarters of the seats) was its generality (at least 70 percent of the seats in each region) (Simeon and Robinson, 1990, p. 301). While "national reconciliation" lay at the core of the Tory's campaign message (*loc. cit.*), it is probably more appropriate to portray the message as an attempt at "rebalancing" the federation and, in particular, re-accommodating some traditional elites — business, the Americans and, above all, the provinces.

Rekindling Cooperative Federalism

From Mulroney's Sept Îles campaign speech (6 August 1984):

Our task is to breathe a new spirit into federalism...A Progressive Conservative government will be guided by the principle of respect for provincial authority (Simeon and Robinson, 1990, pp. 301-2).

From the vantage point of 1980-84, this is, however, really breathing the "old" spirit back into federalism, namely that federalism is first and foremost a relationship among and between governments. This aside, Mulroney certainly acted quickly on this commitment. Interstate (or executive) federalism flourished. Comparing the first year of the Mulroney mandate with the 1980-84 annual average reveals a dramatic increase in "federal-provincial diplomacy": first ministers' meetings (13 vs. 5), ministers' meetings (353 vs. 82), deputy ministers' meetings (72 vs. 45) for an overall total of 438 vs. 132 (Milne, 1986, p. 222).

In terms of substance, rather than process, the Mulroney Tories negotiated both the Atlantic Accord and the Western Accord during their first year in office. The Atlantic Accord was particularly illustrative of the new environment: "Despite a unanimous decision from the Supreme Court in March 1984 awarding Ottawa the exclusive right to exploit and develop the offshore, the Mulroney government less than a year later granted to Newfoundland equal management powers, a decisive say on the mode of development on the offshore, and all rights to apply royalties and taxes 'as if these resources were on land, within the province'" (Milne, 1986, p. 99).⁵ Likewise, while the Western Accord may not have "gutted" the NEP, it did mark a "retreat of federal interests in the energy field, a reversal of the older policy of slanting federal energy policy towards Ottawa's own narrower state interests, and a joint intergovernmental decision to return oil and gas to the more or less normal operation of the market place." (Ibid, p. 112).

The FTA has been viewed as driving the final nail in the NEP philosophy, since it effectively "enshrines" market prices and, therefore, prevents the diversion of western energy rents via "made-in-Canada" prices. This is true. But it does not protect energy rents from the operations of the federal tax-transfer system. Not much political capital is spent in deregulating energy prices in the context of collapsed resource prices, as was the case for the 1985 Western Accord and even the FTA. The real challenge will come if and when energy prices spiral again. At the time of writing, oil is touching \$40 a barrel. Should the price continue at this level, all the old pressures for rent-sharing will be rekindled. Other initiatives that qualify as resurrecting cooperative federalism would include ACOA (Atlantic Canada Opportunities Agency) and WDO (Western Diversification Office), both of which represented an increased provincial-regional say in development initiatives.

The FTA

The overt anti-Americanism of the 1980-84 era (sabre-rattling on FIRA, see endnote 1, and the NEP) became much more problematical in the mid-1980s when the Americans began to run record balance-of-payments deficits. Protectionist sentiment mounted, particularly in Congress, and the fear was that for our earlier sins we would not be exempt from any American turning inward. Hard evidence was not long in coming — U.S. trade remedy actions against Canadian steel, fish, softwood lumber, shakes and shingles, fishermen's UI, etc. Moreover, with the dollar dipping at one point below 70 cents, Canadian business was making important inroads in the U.S. market and free trade would "lock in" this market access. The fact that Europe 1992 was already launched and the fears (in this time frame) that it might become "fortress Europe" implied that, alone of the "G7" countries, Canada would not have access to a "domestic" market of at least 100 million. Finally, but not exhaustively, the Macdonald Commission's strong endorsement for a Canada-U.S. free-trade agreement found a ready audience both in terms of substance and timing. Relaxing the FIRA provisions was a first step, but the window of opportunity opened for something much more grandiose — the FTA.

In terms of the Tories' policy of "national reconciliation," the FTA was a natural. In one fell swoop, Mulroney catered to all of the parties who felt aggrieved by Trudeau's 1980-84 agenda — business, the Americans and the provinces, particularly Quebec (the constitution) and the west (the NEP). Moreover, the Quebec-West business axis was fully in line with the Tories' political base. To be sure, Ontario was offside, but Mulroney cleverly isolated this province by including energy in the FTA: Alberta's support for the FTA stiffened in full knowledge that the FTA would prevent Ontario from ever again unloading an NEP on the west. Thus, whereas Trudeau went over the heads of business and the provinces to the people in implementing his agenda, the FTA reverses all of this — Mulroney went over the heads of Canadians and appealed directly to business and provincial elites. The result was Canada's first recent election fought on "class lines," with Turner positioning himself and his party fully within the 1980-84 conception and with the traditional "class-party," the NDP, intriguingly relegated to the sidelines.

Meech Lake and Tax Reform

The high point of Mulroney's reconciliation efforts during his first mandate was surely the 1977 Meech Lake Accord. Euphoria prevailed for a while and the Accord was viewed as an historic compromise not just with respect to the *Constitution Act, 1982* but also to the *Constitution Act, 1867*. Since interest centres less in its origins than in its denouement, discussion of the Meech Lake Accord will come in the next section of this paper.

The Tories launched into a thorough tax reform mid-way through their mandate. Some of this (base broadening and lowering marginal rates for income taxation) was triggered by the U.S. tax reform. The remainder, essentially the proposed Goods and Services Tax (GST), was designed not only to replace the federal manufacturers' sales tax but as well to shift taxation from income to consumption. For electoral purposes, the Tories split up the overall package, in effect loading all of the "goodies" (lower rates, base broadening, and conversion of exemptions to credits) into the first round and leaving the GST to be implemented in their next mandate. Foresight, let alone hindsight, questioned the political wisdom of a two-stage implementation procedure (Carmichael, 1988; Courchene, 1988).

MULRONEY II: DRIFTING INTO COUNTRY WARP

On November 1988, the Mulroney Tories won the free trade election and by year's end the FTA legislation received royal assent. Thus, as of 1 January 1989, the Tories were in a very unique position: the single issue of the election was now behind them and they had a full term in front of them with effectively no *new* electoral commitments. To this point, nearly two years later, they have enunciated no new agenda (this is apparently due in early 1991) and they have instead presided over an unbelievable unwinding of their pre-existing agenda, replete with profound implications for federal-provincial, interprovincial and citizen-state relations, not to mention implications for the Tories themselves with the popular support for the Prime Minister running roughly at the level of the prime rate.

The Denouement of Meech

The rise and fall of the Meech Lake Accord is far too complex to be dealt with in any comprehensive manner in the present context.⁶ A few comments must suffice. Obviously, the election of Wells, Filmon, and McKenna complicated matters. None of them had signed the original Accord, and two of them (Wells and McKenna) campaigned against the Accord. So, too, Bourassa's recourse to the notwithstanding clause in the context of the sign-language legislation (Bill 178) complicated matters. Immediately, Filmon joined Wells and McKenna in opposition to the Accord. However, in my view, what eventually stymied the Accord, and what has catapulted Canada into a profound constitutional crisis, was and is the clash of two conflicting views of what federalism and constitutional amendment are all about.

The conflict involved both substance and process. In terms of the latter, I have already noted that the democratization of the constitution via the charter and the consequent "entitling" of Canadians (individuals and selected groups) increasingly discredited an amendment procedure limited to 11 (male) first

ministers. Perhaps the most revealing incident in the whole process was the lavish praise from fellow premiers and the Prime Minister showered on Ontario's David Peterson (in the televised "second" accord in the late hours of 9 June 1990) for "magnanimously" offering Ontario Senate seats to clinch the "new" accord, while individual Ontarians were, on the whole, adding this initiative to the list of reasons for punishing Peterson at the polls. The Charter had more than taken root in English Canada. It was redefining what English Canada was all about and this redefinition did not include "eleven men...around a table trading legislative, judicial and executive powers as if engaged in a gentlemanly game of poker" (Deborah Coyne, 1987, p. 8), cited in the Joint House-Senate Committee Report, 1987, p. 130.⁷ In a sense, Meech Lake was hoist on its own petard. The essence of Meech was asymmetrical treatment for Quebec (the distinct-society clause) embedded in a symmetric ratification formula. Under the "equality" thrust of the Charter and the amending formula some provinces simply exercised their equality or symmetry right to defeat the Accord.

In the final analysis, it was Elijah Harper and the Natives that drove the final nail into Meech Lake, but multicultural or women's groups in English-speaking Canada would have done the same had they the opportunity. All first ministers have now recognized that the Meech process was seriously flawed.

Substance is far more complicated. Quebec's Meech Lake demands were couched more in symbol than in substance. Given the humiliation attached with the rejection of this approach, the next set of Quebec demands will surely be steeped in substance and will embody a conception of Canada in terms of decentralization that will go well beyond what most English Canadians deem acceptable. This is particularly the case given that the current mood outside Quebec runs exactly in the opposite direction — toward a strong central government, a uniform application of the Charter throughout the land and, hence, toward a *rescinding* of the notwithstanding clause. However, while concerns about the post-Meech-Lake scenarios are admittedly uppermost in some quarters, there are other concerns contributing to the general malaise in the population.

Fiscal-Driven Decentralization

Despite the fact that many non-Quebec Canadians tend to look to Ottawa to play a greater role, the reality of the last few years is that the federal deficit and debt burden is driving Canada into unprecedented decentralization. Leading the way is the current two-year freeze in established programs' financing (EPF) after which growth in EPF payment will be pegged at the growth of Gross National Product (GNP) minus 3 percent. Since the financing of EPF is a combination of tax transfers and cash transfers, what this means is that the tax transfer component will progressively account for more of the total transfer.

Indeed, estimates suggest that cash transfers to Quebec will fall to zero before the year 2000 and those for the rest of the provinces sometime before 2010.⁸ Thus the roughly \$20 billion of federal transfers will eventually fall to zero. This can be viewed as decentralizing on three counts. First, if the provinces maintain service levels by increasing their taxes, the ratio of provincial to federal taxes will increase. Second, if the provinces react by cutting back these programs or redesigning them, this would also be decentralizing in the sense that these "national" programs will progressively be designed provincially. The third reason is closely related to the second: when the federal cash transfer falls to zero, how does or can Ottawa insist on any standards at all? Less dramatic, but nonetheless significant, are the selected freezes in the 1990 federal budget on the Canada Assistance Plan (for the "have" provinces) and the tightened regulations for unemployment insurance (which, for the poorer provinces, will transfer unfortunate citizens from "federally financed" UI to jointly-financed welfare).

All of this focuses on "expenditure-shifting" as it were. On the revenue side, the GST invades the sales-tax area traditionally viewed by the provinces as their home turf. Intriguingly, there have been two polar responses to this. On the one hand, Quebec has decided that it will integrate its sales tax with the GST (and will collect it for Ottawa and presumably will, at Ottawa's expense, employ Quebec civil servants rather than "feds" in the process) and thus will take advantage of the broader base to lower its sales-tax rate. On the other hand, the western provinces, at the Western Premiers' Meeting in Lloydminster in July 1990, have argued that the resulting revenue constraints may require that they develop, à la Quebec, their own, separate, personal income tax (PIT) system (Western Finance Ministers, 1990). While this initiative has been viewed as a flexing of western muscle in the post-Meech era, it is significant to note that the 20-page document espousing a separate PIT made no mention at all of Meech. Rather it was driven by the issues and concerns raised above.

In any event, whereas the 1980-84 squeeze on intergovernmental transfers was part of an overall framework to increase federal visibility and enhance national standards, the current squeeze is fiscally driven and, if anything, will lead in the direction of increased and/or enforced provincial autonomy over the design and delivery of the social envelope.

FTA Implications

Somewhat related to this are two implications arising from the FTA. The first of these has to do with the political economy of east-west transfers under increasing north-south integration. As long as trade flowed largely east-west, with Ontario the principal north-south conduit, the second-round spending impacts of interregional transfers generally came to rest somewhere in Ontario. Under full north-south integration for all of Canada's regions, this may no

longer be the case. Some of the regional payments imbalances with the centre will now shift south with the result that the second-round impacts of regional transfers may no longer come to rest in Ontario but rather in say, North Carolina or California. At a political level, this will surely erode support for these transfers, particularly those that privilege "place" rather than people.

This may or may not be viewed as decentralizing, but what is clear is that sheltering significant regions of the country from market forces is going to become progressively more difficult both economically and politically.

The second implication relates to north-south integration itself. What this means is that the provinces and regions will now pay more attention to their competitive position vis-à-vis their cross-border regions. Thus, the provinces will take umbrage at federal policies that for whatever reason place their economies at a disadvantage, north-south. The result may be that the provinces will demand more say in economic policy affecting their region and may imply that wage behaviour across regions will become more diverse, perhaps even to the point of having wages for federal employees based more on regional than national scales.

In economic parlance, all of this can be restated as follows: the optimal currency area is no longer the nation but the cross-border regional economies. One implication is that as north-south integration proceeds the appropriate exchange-rate policy will be one that favours fixity over flexibility. To delve into this in any detail (Courchene, 1990) would take me too far afield. Suffice it to say that the Quebec Chamber of Commerce (1990) submission to the Quebec Parliamentary Commission on the provinces' political and constitutional futures devotes considerable time to rethinking the framework for the conduct of monetary policy.

Institutions in Decline

Never has the popularity of a governing party fallen so low. This in itself is raising some major concerns about the nature of representative government. In this progressively information age, where direct democracy (e.g., referenda) is now increasingly feasible and when five years is easily equivalent to several mandates earlier in this century, should there not exist mechanisms for triggering elections or at least mechanisms such as referenda where the government must achieve some minimum level of support (say 25 percent) to forestall an election? What this would mean is that the nature of "responsible government" would become two-fold: in the normal course of events it would be defined as usual (support of elective representatives), but in abnormal times the "responsibility" would also have to carry over to citizens. What generates these concerns is, of course, the GST debate. Here we have the incredibly ironic situation where the unelected Senate is attempting to reflect the democratic will of the *people* (not the elected representatives). To be sure, this does run counter

to parliamentary democracy and perhaps to the spirit of the constitution, but it does not run counter to the formal word of the constitution nor to a more general interpretation of democracy. If the Senate has any moral role in the legislative process, it is precisely at times when a government with 15 percent national support is attempting to push through a significant measure that roughly 80 percent of Canadians are against.

However, for purposes of this paper, the real issue is not the low popularity of the Tories but rather the incredible degree of cynicism that has developed with respect to our traditional institutions of national governance — the House, the Senate, national parties, executive federalism, etc. Some of this began in Mulroney's first mandate (e.g., the CF-18 fighter contract) and was certainly advanced in the more recent budget where Via Rail cuts and military closures were concentrated (perhaps unavoidably, but the issue is perception not reality) in provinces that opposed either or both Meech Lake and free trade (New Brunswick, Newfoundland and Manitoba). More recently, the appointment of the eight special Senators runs directly contrary to the aspirations of the west for Senate reform. This is particularly the case for Alberta, the principal "Triple-E" advocate, since the packing of the Senate is viewed by them as designed to unload the GST on Alberta. One not surprising result is the move toward regional parties, parties that *will* vote their regional (not national party) interests — Reform in Alberta, Bloc Québécois in Quebec and COR in New Brunswick, for example. Note that a decline in the role of national parties and the rise in regional parties is somewhat similar to the earlier suggestion for more direct democracy since the allegiances of the new parties are to the regions they represent and they would bolt from any "governing coalition" on an issue of such importance as the GST.

The second result is that the Mulroney Tories have by now almost completely unwound any "national reconciliation." In terms of the impending constitutional challenges, the timing could not be worse since there is literally no one in the system now who has the moral authority to speak for English (or non-Quebec) Canada.⁹

Native Issues

With Elijah Harper in Manitoba and with the fallout from events in Quebec in the summer of 1990 (Oka/Mercier), aboriginal rights have now been catapulted to the top of the constitutional agenda, at least for English Canada. As my colleague John McDougall has noted, Canadians are finally coming to the realization that land is to the Natives what language is to the Québécois. However, there is a worrisome undertone to all of this, namely that English Canada might be privileging aboriginal rights as an instrument in the ongoing Quebec-Canada clash. In this regard, Premier Rae's very strong commitment to meaningful negotiations on aboriginal issues is particularly welcome.

What all of this means is that it will be extremely difficult for English Canada to even contemplate consideration of a new set of constitutional demands from Quebec unless, among other items, aboriginal rights and issues are an integral part of the package. Meech Lake spelled the end, at least for the foreseeable future, of incremental (single-issue) constitutional change. I doubt whether Quebec realizes this or is willing to accept this — yet another challenge for the 1990s in terms of our constitutional future.

III. GLOBAL DETERMINISM

Thus far, the thrust of the paper has been, implicitly, that the forces driving future change in federal-provincial, interprovincial or citizen-state relationships are *internal* forces. This is far too narrow a conception. Indeed, I would suggest that the forces of globalization will have more impact on the triad of relationships in the millenium than will internal factors.

Drawing very briefly from other work I have done, it seems to me that globalization and the telecomputational revolution will affect the role of national governments in at least four ways. Two of these relate to a transfer “upward” of some of the traditional functions of national governments. The first is the growing importance of transnational corporations. Unlike the old multinational corporations which entered countries subject to a host of “commitments,” transnationals enter under “national treatment” conditions (i.e., the rules that apply to domestic corporations must also apply to foreign-owned corporations). Moreover, it is the transnationals (i.e., the private sector not the public sector) that are now driving globalization. This has enormous implications. For example, one can no longer meaningfully speak of a “national” production economy. Production is international and this poses major concerns for national welfare states since they were, in general, geared to “national” production machines. Second, and related, national governments are increasingly finding that activities that used to be done at the national level now have to be passed “upward,” partly as a countervail to the globalizing transnationals. The Bank for International Settlements (BIS) capital-adequacy rules for financial institutions are a good example. This tendency toward international regulations and international standards is bound to expand and multiply.

The two other forces pass “power” downwards. First, the information revolution is privileging citizens. They are garnering enormous power as a result and this complicates old-style governance (for unitary or federal state alike). One way to view the information revolution is to note that “transmitters” used to control the information flow: increasingly, the “receptors” are in the driver’s seat. Second, and more intriguing, globalization is spreading across the world through a network of “international cities.” Nothing much has changed over the last decade in the relationship between the federal government in Ottawa and

Bonn, except that soon it will be Berlin. But much has altered in the relationship between Toronto and Frankfurt. Yet our international cities (Toronto, Montreal and Vancouver) are "constitutionless." They are creatures of their respective provincial governments. Given their role as the engines of expansion, this poses jurisdictional problems because Saskatchewan's international city is not in the province and the Maritimes international city (Boston/New York) is not even in the country.

I shall limit myself to only one implication from all of this. In the face of a diminished role in the economic and regulatory sphere for national governments, citizens will increasingly view "sovereignty" as the ability to influence how they live and work and play. One can argue whether or not this is the role of government at the city or provincial level, but under the existing distribution of powers, it is *not* the national level. Are "distinct societies" the way of the future?

What all of this brings to mind is the McLuhan vision of the "global village," or the "think globally, act locally" slogan of environmentalists. With the emphasis on markets, with the information revolution empowering citizens and with national governments attempting to "federalize," internationally, it is difficult not to view all of this as inherently decentralizing.

IV. CONCLUSION: THE 1990s AND THE CONSTITUTION

From the perspective of 1980, we are almost unrecognizable as a society. The institutions and the compromises that brought us through our first century are now no longer in vogue, let alone tolerated. Meech Lake and its distinct society clause is the best example of all of this. In an important sense it was rooted in the spirit of the *Constitution Act, 1867* — a society struggling to maintain its identity in the face of a "sea of anglos" and seeking to secure this through a lot of symbol and a slight extension of existing substance. Implicit, if not explicit, in the Meech Lake process was an olive branch (indeed, a *carte blanche*) offered by Quebec to EBQ (Everybody but Quebec) — please take advantage of this opportunity to restructure yourselves in your likeness and image so you too can mount a bulwark, should you wish, against the sea of Americans. Where Meech Lake went off the rails is that EBQ never responded to this challenge. There was a period earlier this year when Premiers Filmon, Wells and McKenna could have utilized their potential Meech Lake veto, *not* to subject Quebec to this or that condition, but rather to extract a new deal in EBQ. For reasons elaborated earlier, this did not materialize. The fact remains that Quebec was, and still is, profoundly indifferent as to how EBQ restructures itself internally, provided only that Quebec acquires certain powers.

My personal view, and really one of the conclusions of this paper, is that this remains the real constitutional opportunity for the 1990s. No province would

be happier if this would occur than Quebec. Thus, the real challenge facing EBQ is not so much to focus on what Quebec wants, but rather to focus on what the rest of us, collectively and individually, want from Canada. If we could settle on this first, then whether or not our goals are consistent with Quebec's would be clear cut. If they were, then integration between EBQ and Quebec might still be complicated in practice, but not in principle. It is in this sense that the ball is now in our court.

If the above analysis serves as a guide, however, the prospects are not good. In 1980, EBQ was incredibly apprehensive about a Quebec referendum. No longer. Setting the "we've had enough" arguments aside, there are several reasons why this is the case. Foremost among these is the FTA. The prospects of a breakup in 1980 could have been devastating in economic terms: Ontario would have been forced, literally, to plead to be the 51st state. Not so now, since we have presumably guaranteed access to the U.S. market. But this works in "boomerang" fashion as well: with guaranteed access to the U.S., why cater to *any* Quebec proposals since, in the event of a break-up, we can always mount some sort of free-trade agreement with Quebec. Everybody in the world is doing this. Thus, the economics of a potential break-up is no longer the critical issue that it was in 1980 for EBQ (more correctly, for Ontario and the west since an independent Quebec would pose significant problems for Atlantic Canada).

Having thus set aside the economic issue for EBQ, the major change ushered in by the events of the 1980s is that EBQ has come an enormous way in terms of defining itself: we are a "Charter" nation. As I have elaborated above, at base this is quintessentially American. However, it is appropriate and important to recognize that our *value system* through which the Charter is interpreted remains, thus far at least, quite different from the American creed. But, it is also the case that "life, liberty and the pursuit of happiness" resonates better with the Charter and the FTA than does "peace, order and good government." Phrased somewhat differently, whereas Canada was traditionally "goal oriented" while the U.S. was more "means oriented," the Charter is driving us quite dramatically in the direction of "due process" (means), perhaps at the expense of goals. Put yet another way, Quebec's approach embodies a collective rights agenda that is not only inherently goal-oriented and resonates well with "traditional" Canadian ways (crown corporations, "place" prosperity, equalization, etc.) but runs directly counter to any individualist or due-process mentality. In turn, this emphasis on due process or appropriate process is unwinding the legitimacy of the Commons, the Senate and particularly executive federalism, and is finding recourse in regional parties and punishing leaders like Peterson who were actively engaged in "traditional" processes like executive federalism.

One can of course argue that the solution lies in electing a new "group" or in implementing new institutions such as a Triple-E Senate. I do not wish to

argue that these are not potential solutions. But it is also critical to recognize that Canada has embarked on a wholly novel and exciting venture, namely integrating a charter society with a parliamentary society. At the underlying philosophical level, the Charter is, as yet, inconsistent with our traditional notion of Parliamentary government and is surely inconsistent in its process dimension with executive federalism and particularly with the executive federalism amending procedure. Accommodating these institutional/ philosophical conflicts is challenging enough without having them overlaid with proposals from Quebec that will surely be seen as seeking special status. But this is our fate in the 1990s.

Two final comments are in order. The first is that under the influence of, among other things, the charter, the push for a Triple-E Senate and the amending formulas (particularly in Meech but also in the *Constitution Act, 1982*), there is a view emerging in EBQ that the appropriate conception of constitutional federalism is one that has identical powers across all provinces, i.e., symmetrical federalism. Apart from the fact that this represents an incredibly revisionist view of our 120 years of history, it may be a recipe for disaster. Quebec will argue for, and in my view requires, some powers that would be patently foolish to give to all other provinces. Consider manpower or human-capital policy. It may have gone unnoticed, but Quebec has long had substantial control in this area and in any set of proposals it will probably want even more control. How does EBQ respond? Symmetry is a non-starter: no one would suggest that my home province, Saskatchewan, ought to have its own, independent, human-capital policy. One logical response to symmetry is for the west and Atlantic to merge themselves into "regional" provinces: a human-capital policy for Canada west and Atlantic Canada may make sense, but not along existing provincial lines. Thus, if symmetry is to prevail it implies a realignment such that the new provinces have a sufficient economic and population base to meaningfully utilize such powers. Premier McKenna's recent proposal for improved Maritime economic union might be best viewed in this context.

However, this degree of change is unlikely in the near future. Elsewhere (1990b), I have argued that there is an alternative approach to the symmetry issue. The first step would be to allow all provinces equal powers (symmetry in principle) but then let EBQ utilize section 94¹⁰ of the *Constitution Act, 1867* to "pass upward" some of these powers, either to Ottawa or to an EBQ "super level" (i.e., asymmetry in fact). This is "opting in," in contrast to the Quebec's "opting out" which generated much of our existing asymmetry and which is (apparently) no longer acceptable. I believe that this is more than a gimmick: it incorporates a conscious exercise in constitution-making on the part of EBQ and, as important, this procedure is rooted, not in some novel recommendation, but right in the original BNA Act.

The second observation relates to Quebec. EBQ will have substantial trouble with the request for greater powers on the part of Quebec. After all, is this not the province that went through not one, but two, societal revolutions since 1960 — the Quiet Revolution and what I have referred to as “market nationalism” (Courchene, 1989)? Moreover, Quebec has gone its own way in terms of tax policy, financial institutions, the role of the “caisse de dépôt,” and laws relating to language and culture. And now, thanks largely to Quebec, we have the FTA. So the question in EBQ becomes: given that Quebec has been able to do *all of this under the existing constitution*, how can they be dissatisfied? Do they not already have a version of sovereignty association, albeit within the constitutional framework? Are not any additional demands really disguised demands for separation, in which case they will be never-ending?

These are indeed critical questions. I have no answers but I do have some responses. First of all, the fact that Quebec was excluded from 1982 was not a major issue for Quebecers (as distinct from their government), *at that time*. They were engaged elsewhere, developing their entrepreneurial class and information networks in French. Even at the time of Meech Lake, much less than 10 percent of Quebecers had any interest in the substance or process. (Moreover, Quebecers paid much *less* attention to the substance of Meech Lake than did the rest of Canadians). The Quebec Government was concerned, however, and I think the reason was that the Charter-cum-constitution had potential for not only restricting future Quebec accomplishments on the cultural-socio-economic front but as well for rolling back *existing* accomplishments. With hindsight, even if Quebec was excluded from 1982, it would have been useful to “grandfather” the sorts of initiatives that they had been undertaking unless they ran directly counter to the Charter. This has always been my personal rationale for supporting Meech — enshrining the “distinct society” clause would allow Quebec to continue its dramatic post-1960 evolution. It is in this sense that Meech was really more about symbol than substance, since it was not immediately evident, even to Quebecers, *where* and *how* the *Constitution Act, 1982* would bite.

But EBQ rejected this symbolism. Now the name of the game has altered dramatically. Quebec is forced to restate its case *in terms of substance*. This is going to be difficult for Quebec. The tendency will clearly be to cast the net quite broadly. Added to this is the fact that Quebec will not want to place itself once again in the Meech Lake position where there is no fallback position. Thus, unlike in Meech Lake, Quebec will *not* table a set of *minimal* demands.

My second general comment is that Quebec was humiliated by the Meech Lake process. In 1980, Quebec said yes to Canada. In EBQ’s “referendum” (Meech Lake), EBQ said no to Quebec. Earlier, I noted that the FTA among other things implied that EBQ would be less concerned (than in 1980) with an independent Quebec. The reverse is also true. The remarkable “épanouisse-

ment" of the Quebec business sector during the 1980s engendered a sense of confidence among all Quebecers that they could "go it alone" if EBQ was unresponsive to their concerns.

My last comment in this context is at the heart of the pending Quebec-EBQ impasse. The next round of Quebec proposals will be driven largely from a business-economic-global perspective, with of course due recognition to language and culture. The co-chairmen of the parliamentary committee are (for the Liberals) Michel Belanger, retiring chairman of the National Bank and (for the P.Q.) Jean Campeau, retiring chairman of the Caisse de dépôt, by far the largest investment fund in the country. They may have differing political ideologies when it comes to the appropriate "constitutional" setting for Quebec within North America, but they are unlikely to differ much in terms of the nature of the measures required to ensure that Quebec remains viable economically in the FTA and global context. Moreover, Bourassa's own statement on 23 June 1990, was that Quebec would not embark on any venture that would endanger the economic livelihood of Quebecers. Hence, what will emanate from Quebec in the new year is an economics-driven agenda.

However, unless things change markedly, our response will be a *socio-political response*,¹¹ conditioned largely by the values of the Charter and provincial symmetry. Canadians are caught in a time warp. English Canada and particularly Ontario, is only now going through its own "Quiet Revolution." Quebec knows where it wants to go and is determined to get there, Canada notwithstanding. EBQ is still wrestling with where it wants to go. Part of the problem here is that EBQ, and particularly Ontario, has always been so well-positioned economically that the sorts of global economic concerns that influence Quebec elites have never permeated the minds of Ontario citizens. And if they did, this is what Ottawa is for, isn't it? Queen's Park plays nowhere near the role for Ontario-based business that Quebec City plays for Quebec-based business.

In any event, the underlying message is that it would be a tragedy of monumental magnitude to reject an economics-driven package from Quebec on the basis of socio-political concerns only to realize a decade or so down the road that British Columbia, too, wants a similar package of "distinct society" proposals because it is fully Pacific Rim oriented and, perhaps, largely Pacific Rim peopled.

In lieu of a formal conclusion, I want simply to reiterate some of the major forces that will be at play in the 1990s. First and foremost, we must be aware of the way that global forces are shaping not only Canada but all nation states. I may be wrong to suggest that these forces imply a declining role for national governments and an increasing degree of consumer and citizen "sovereignty," but I am not wrong to suggest that it is utter folly to swim against the globalization tide. In this context, EBQ may aspire to a stronger role for the federal government, but if this is the case it must be a *different* role than Ottawa

has traditionally played. And it behooves EBQ to begin defining this new role now. Elsewhere (Courchene, 1990b) I have suggested that one obvious role for government in a globalizing world is to privilege citizens in the pursuit and development of their human capital potential. This is good social policy and it is also effective economic policy since knowledge is increasingly at the cutting edge of global competitiveness.

Second, Quebec and Ontario (and perhaps EBQ as well) are at quite different phases of socio-political-economic philosophy. Quebec has had its cultural or Quiet Revolution whereas Ontario is only beginning. The challenge here is, somehow, to see the future through all of this when evaluating any new constitutional proposals. Third, even if the Charter may be "Americanizing," the fact is that Canadians not only have a markedly different value system than the Americans but this is an integral part of what defines us as a society. Yet much of this value system has been conditioned over the years by the role of Quebec in the federation — regional policy, equalization, multiculturalism. Both the FTA and globalization are exerting enormous pressure on this value system. Before we jettison Quebec (and what we will likely perceive as its outlandish demands come next spring) we should be sure that we have put in place some mechanisms to anchor these values.

This leads me to the final point of the paper. Observers of the Quebec scene have a reasonable sense of the nature of the demands that will emanate from that province over the next year or so — control over manpower, telecommunications, language, culture, perhaps research and development, plus a significant "disentanglement" in terms of overlapping functions, etc. On the surface, the issues in play in EBQ will be "symmetry," the Charter and centralization-decentralization. However, in order that these proposals can be fully addressed, EBQ must begin the admittedly difficult process of sorting out its own cultural-economic priorities vis-à-vis Quebec, the Americans and the rest of the world and the reference point for all of this must be the year 2000 or beyond and not 1990 or 1991. Quebec is conveniently providing the window of opportunity for precisely this exercise. It is unlikely that we shall be so lucky as to have the constitutional lights ever again flash green. Our best hope is to keep our wits about us, to focus beyond the intersection and, when the time is ripe, to "run the amber."

NOTES

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McDougall in the preparation of this paper. Robert Young also contributed valuable suggestions.

1. It may seem ironic that although FIRA was established in 1973, it did not become a bilateral issue until 1981. As Leyton Brown (1985, p. 33) notes:

FIRA and the NEP came to be referred to in a single breath for three reasons: first, because of FIRA's apparent association with the NEP; second, because of the cumulative effect of FIRA's recent regulatory practices; and third, because the Canadian government's announced intention of broadening and expanding FIRA's powers in a fashion the United States saw as discriminatory.

These "intentions" were advanced in the 14 April 1980 Throne Speech and included expanding FIRA's powers to publicize foreign takeover bids, to seek Canadian counterbidders, and to conduct performance reviews of existing foreign-owned companies (Ibid, p. 41). Canada eventually backed off these intentions.

2. One important aspect of this is the degree to which the Canadian Supreme Court relies on U.S. decisions in adjudicating cases under the Charter. (See Manfredi, 1990.)
3. The intent is not to argue that the trend toward provincial equality stems from the Charter. Clearly, the emergence of the principle of equality of provinces can be traced to such events as the return of control over public lands to the western provinces, the evolution of the various amending formula toward equality and the movement toward a "Triple E" Senate. Milne (1990) traces this evolution of provincial symmetry. The point in the text is that the Charter enhanced this vision of equality, particularly in terms of the opposition to the distinct society clause in Meech.
4. Presumably in order to rectify this, one year to the day after the November 1981, Constitutional Accord, Trudeau launched the *Royal Commission on the Economic Union and Development Prospects for Canada*. While this (Macdonald) Commission's final report did endorse the notion of a Canadian economic union, it did anything but embrace the 1980-84 nationalist, centralist-interventist agenda. Opting for free trade ran directly counter to economic nationalism and the focus on "people prosperity" rather than "place prosperity" ran counter to the notion of a centralist-interventionist federal government. This is further evidence to the effect that the Trudeau agenda had generated powerful countervailing forces.
5. To be fair, Trudeau's "Second Coming" also took Atlantic Canada's concerns into account. Section 36 of the *Constitution Act, 1982* enshrined equalization as well as provisions for equalizing regional opportunities. Moreover, the 1982 Nova Scotia energy accord went some direction toward recognizing Nova Scotia's interests, but nowhere near as far as the

Atlantic Accord, especially after taking account of the 1984 Supreme Court decision.

6. For further discussion, see Watts and Brown (1990, Chapters 1-3).
7. This provides yet another perspective from which to assess the "rolling of the dice" analogy utilized by Mulroney in the dying moments of Meech.
8. Quebec has long received extra personal-income-tax points in lieu of cash transfers for post-secondary education funding. Thus, its cash transfers fall to zero before cash transfers to other provinces.
9. It is not obvious that the federal government could, even in the best of times, legally or constitutionally speak for English Canada since it also represents Quebec. As one commentator put it recently, Ottawa speaks for ten provinces and each provincial government can speak for only one. Thus, there is no formal or legal constitutional institution that can speak for EBQ (everybody but Quebec).
10. Section 94 reads as follows:

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure or all or any of the Courts in Those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have any effect in any Province unless and until it is adopted and enacted as law by the legislation thereof.

Frank Scott argues that the role of this provision was to allow the original non-Quebec provinces (and future non-Quebec provinces as well) to "centralize" if and when conditions became more favourable. (See La-Selva, 1983).

11. To be sure, there may be issues on which a socio-political response is fully appropriate. However, what I have in mind here is, for example, an adherence on the part of EBQ to a strong role for Ottawa (in the face of a decentralized Quebec agenda) when the thrust of global forces is *also* decentralizing.

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Appendix Table:
Political/Economic Factors
Conditioning the 1980s Constitutional Climate

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
Panel A: Trudeau's Second Coming					
Dawn of 1980s	Clark Interregnum	Resource Boom	Clark Tories willing to accommodate west in terms of Energy Prices. (Decentralization)	Economic centre of gravity moving west.	Demands rising to share Alberta's rents.
Feb. 1980	Trudeau's second coming		Appeal to Canadians, not provinces. Campaign against Clark's decentralist/privatization agenda.	Ontario lowers boom on Alberta. Premier Davis' words (not premier himself) feature prominently in Liberal campaign.	Final campaign swing through Ontario reveals nationalist/interventionist philosophy. Beginning of rift between business and Ontario government.
April 1980	FIRA proposals in Throne Speech		Beginning of economic nationalism.	Another Ontario First policy. (Canadians do not have enough confidence to invest outside Ontario).	Increasing concern by business about anti-U.S. policy.
May 1980	"No" forces win Referendum		Trudeau promises "je fédéralisme renouveau."	Provinces anticipate enhanced powers under renewed federalism.	Canadians breathe sigh of relief.
Summer 1980	1980-82 constitutional negotiations begin		"Economic Union" (Internal Common Market) provision very centralizing. Provinces caught by surprise.	Provinces view Ontario's support of Trudeau's package to be Ontario First policy (Economic union gives Ontario access to Energy projects). Ontario also argues for protecting domestic market from foreigners.	"Peoples package" (Charter and Economic Union) appeals to Canadians. Represents the beginning of people vs. provinces clash that eventually rises to fore at end of decade.
Fall 1980	NEP (Budget)	NEP	Ottawa pre-emptis western energy rents and transfers them to Canadians via lower-than-world prices. Diverts activity (via subsidies) from west to "Canada lands."	Viewed by west as an Ontario-Ottawa conspiracy. Strengthens west (Alberta)-Quebec axis, since Quebec supports west's position.	Raises issue of whether Canada is about people or provinces. Business community very concerned about anti-American aspects of NEP as well as interventionism (e.g. the "back-in" and the Canadian content provisions). Business concerned further by MacBachan's 1981 Budget and its retroactive provisions.

Appendix Table (continued)

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
1981	Neo-conservatism (Reagan, 1981; Thatcher, 1979)		Canada way off side vis-à-vis rest of world.	Resonates more with Canada west than with Ontario (especially in light of NEP).	Astonishing degree of antagonism towards Reagan philosophy, at least as reflected in <i>Globe and Mail</i> op. ed. pages.
April 1981	Re-election of PQ		Stage is set for clash over the constitution.	Quebec's embracing of an economic agenda will create substantial problems for other provinces (e.g., financial deregulation).	PQ drops sovereignty, pushes economic agenda. Beginning of Quebec's embracing of the international economy, which culminates in overwhelming free trade support in 1988 election.
Fall 1981-Spring 1982	Midnight Accord and Constitution Act, 1982		The "gang of ten" isolates Quebec and repudiates the constitution. The west is brought in by a resource taxation amendment and the Notwithstanding Clause. Newfoundland obtains provisions for preferential hiring for off-shore employment. Thus, the "economic union" beginnings of the 1980-82 constitution process are sacrificed to repatriate the constitution, replete with the Charter. Quebec invokes notwithstanding clause for all its legislation and withdraws from all further constitutional conferences.	Amending formula for most items is 7 provinces and 50 percent of population plus federal government. Quebec "loses" veto here. However, for certain items, unanimity is required. This advances the concept of provincial equality (symmetry).	The constitution is "democratized." Aboriginals, linguistic minorities, multi-cultural groups, women (gender equality) have rights enshrined via Charter. Most significant constitutional change since Confederation. Flags fly at half-mast in Quebec City, but Quebec citizens largely indifferent, pursuing "market nationalism."
1981+		1981-82 recession and then auto-led recovery in Ontario and collapse of energy and raw material prices.	Interest rates peak at over 20 percent in depths of recession. Federal deficit mushrooms. The 6 and 5 program initiated. Ottawa pares back transfers to provinces.	Ontario again king of the castle. Reverses 1970s and early 1980s where resource provinces acquired power. West falls upon hard times.	Severity of recession increases citizen attachment to transfer system.
1984	Canada Health Act		Arguably, the apex of Trudeau centralization. Ottawa will control standards and aspects of medicare. Unanimous commons support, despite opposition of several provinces.	Several provinces incensed. Lays groundwork for spending power provision in Meech Lake.	Triumph for "national programs." Citizens ignore constitution and look to Ottawa, not provinces, for maintenance of social programs.

Appendix Table (continued)

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
1984+		Record U.S. Twin Deficits (Fiscal and trade)	Concern over fiscal deficits does not spread to Canada. Will create problems later. Fall in Canadian dollar enhances our penetration of U.S. markets. - Fuels U.S. protectionism vs. Canada.	Ontario "spends" fiscal dividend unlike Alberta in '70s which banked its fiscal dividend in the Heritage Fund. Later, this forced the Bank of Canada to use high interest rates across Canada to control "Ontario" inflation.	Record balance of payments deficits leads to protectionist sentiment in U.S. Trading status quo in danger particularly in light of U.S. view of FIRA and NEP.
Panel B: Mulroney I.					
Sept. 1984	Mulroney Election		Business agenda (deficits and patching up relations with the Americans) and reconciliation agenda (with west in terms of NEP and with Quebec in terms of 1982 constitution). Focus switches away from citizen interests toward provincial interests. Overall agenda is decentralist.	Development of Quebec-west Axis. But Tories also have 70 percent of seats in each region. Arguably, Mulroney government proves to be least responsive to Ontario's concerns in this century.	Citizen-state relationships alter dramatically. Tory concern is more with provinces (federalism) than with citizens. And at citizen level, interest centres on business rather than the "ordinary citizen" (as in Canada Health Act). Turner's patronage appointments are major factor in election. Voters anticipate new approach from Tories who deliver, initially, with the appointment of Stephen Lewis as UN ambassador.
1985	Western and Atlantic Accords		Resurrection of cooperative federalism.	Resource provinces gain greater control.	Little reaction, since easy to move to market pricing when resource prices are depressed.
1985-87	Abortive Aboriginal Constitutional Deliberations		Negotiations on an amendment for aboriginal self-government break down.	Quebec not at constitutional table.	Citizen involvement and concern minimal. Aboriginal loss here will reverberate on Meech Lake, although through unanticipated channels (Elijah Harper in Manitoba).
1987	Meech Lake Accord		Unexpected unanimous agreement on integrating Quebec fully in the constitutional family. Viewed by Ottawa as historic compromise, not only with respect to 1982, but 1867 as well.	Initially, highpoint of Mulroney's reconciliation efforts. Atmosphere among premiers close to euphoria. Three year ratification process proves too long to ensure passage. Several provinces initiate hearings.	Initial citizen reaction positive, but not euphoric. As process proceeds, Charter entrenched groups (women, aboriginals, multicultural groups, etc.) gain strength and challenge the legitimacy of a ratification procedure that rests solely within the realm of executive federalism.

Appendix Table (continued)

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
1987+	FTA and 1988 Election		Tories sign FTA with U.S. 1988 election on FTA won, thanks to overwhelming Quebec support. Opposed by Ontario, PEI and Manitoba, although business interests deliver much of Ontario in 1988 election. The western provinces, historical free-trade advocates, very lukewarm to FTA, except Alberta. Reflected in election results. FTA transfers aspects of Canadian sovereignty upward to FTA tribunals. As of 1 January 1989, Tories have a full mandate with no electoral commitments.	For Quebec, FTA is just one more step in direction of "market nationalism." Alberta views FTA as guarantee against another NEP.	1988 election fought on "class" lines. BCNI very active and successful, particularly in Ontario. Surprisingly, NDP not a factor in this "class" conflict. Individual Canadians express concern about social programs. (Viewed as essential component of glue that binds our polity).
Panel C: Mulroney II.					
1 Jan. 1989		FTA	Emphasis on markets is "decentralizing" in the important sense that all levels of government are constrained. Although the FTA applies largely to the federal government, the provinces will eventually be equally bound. The Supreme Court is likely to be quite intolerant of interprovincial barriers now that there is Canada-U.S. free trade.	Support for the east-west transfer economic integration along north-south lines will increase. In the limit, as north-south integration proceeds, the Canadian regions will likely become less integrated east-west.	The "life, liberty and pursuit of happiness" of the U.S. Constitution resonates more with the FTA than the "peace, order and good government" rhetoric of the Canadian constitution. Thus, the FTA (by emphasizing markets) and the Charter (by introducing the Courts into our Parliamentary system) introduce powerful "Americanizing" influences into Canadian politics and governance. The challenge is to maintain a Canadian polity in the presence of a north-south economy.
1987-89	Election of new premiers		New Brunswick (McKenna, Oct. 87), Newfoundland (Wells, April 1989) and Manitoba (Filmon, April 1988) have new premiers. Since they were not signatories to Meech Lake, they do not feel bound by the agreement.	Beginning of provincial split over Meech.	Individual Canadians delighted to find new avenues for combatting Meech Lake. Premier Wells, in particular, is literally overwhelmed by anti-Meech Lake "support" from non-Newfoundland Canadians.

Appendix Table (continued)

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
1989-1990	Erosion of National Reconciliation		Tories begin process of alienating almost everyone. 1989 budget punishes anti-free-trade provinces (PEI and Manitoba) and anti-Meech Lake province (NB) in terms of military base cuts and Via Rail cuts.	7-3 split develops over Meech.	National debates, such as that over the FTA, inevitably generate opposition. These measures, however, introduced a conception of cynicism, if not venetfulness, on the part of the Mulroney Tories. Opposition is particularly strong in the west (particularly Alberta) which promotes both Senate reform and the Reform Party.
Dec. 1989+	Bill 178 and the use of the Notwithstanding Clause		In wake of Supreme Court judgment, Bourassa utilizes notwithstanding clause, to promote use of French in terms of commercial signs. Mulroney and other original Meech signatories hold firm to Meech Accord. Begin to speak of "disaster" scenarios if Meech fails.	Reaction in rest of Canada stuns Quebec. Manitoba, for example, rethinks Meech policy. Somewhat later, i.e., over Charest report "Bloc Québécois" is launched, supported passively at least by the Montreal business community.	For citizens, Meech becomes a lightning rod for all manner of concerns about Mulroney Tories. Anti-French sympathies materialize, particularly in Ontario. More substantively, many Canadians and some premiers adopt positions that all Canadians and all provinces ought to be treated equally. Influence of Charter is evident here.
23 June 1990	Meech Lake Falls		"Second Meech Accord" falls apart under pressure from Manitoba (Elijah Harper) and Newfoundland. However, supposed negative capital markets implications of Meech do not materialize. Both Michael Wilson and Premier Bourassa move to calm international capital.	Tumultuous St. Jean Baptiste Day Parade in Quebec. Later, Bloc Québécois sweeps by-election. Quebec constitutes two commissions to propose new constitutional arrangements. Suggests that in future it will deal with "Canada" only on a one-to-one basis. But who speaks for Canada? Ottawa and provinces contemplate their own constitutional commissions.	In a sense, triumph for Charter and "symmetrical" federalism.
Summer 1990	Oka/Mercier		Deflates sovereignty balloon. Raises general question of role of aboriginals in any Quebec constitutional alternative. Catapults native rights into forefront.	Focus is on Quebec, but substantial implications for other provinces since most aboriginal claims are outside Quebec. In general, citizens outside Quebec more tolerant of Native demands.	Extremely complicated impasse, but probably the case that citizens outside Quebec become less tolerant of Quebec demands, constitutional or otherwise.

Appendix Table (continued)

Date	March of Events		Federal/Provincial Implications	Interprovincial Implications	Implications for Citizen/State Relationships
	Political	Economic			
1990-		Monetary Policy	High interest rates and an overvalued dollar lead initially to charges that the rest of Canada is fighting the Ontario-triggered inflation. Later, even Ontario suffers from tight money.	Quebec Chamber of Commerce report to the Quebec parliamentary commission on the constitution argues for substantial changes in the structure of the Bank of Canada.	Business increasingly concerned that the overvalued Canadian dollar is converting the FTA opportunity into an economic nightmare.
1990		GST and Senate Appointments	Ottawa pushes GST in spite of overwhelming opposition from provinces and Canadians. Quebec finally comes on side in anticipation that it can collect and administer the federal tax. Senate threatens to withhold approval. Mulroney begins stacking Senate.	Packing of Senate stymies Senate reform process. Quebec-west axis weakens as Quebec supports GST.	Incredible cynicism pervades country. Senate appointments deflate western hopes for a reformed Senate.
1990-		Globalization	Ongoing globalization has substantial ramifications for the future of national governments. Powers transferred "upwards" to transnational enterprises and to supra-national governmental bodies and "downwards" to consumers via the information revolution and an emphasis on markets.	Emphasis on markets likely to make regional transfers more difficult in future. Regions likely to become more independent of each other.	As globalization erodes role of national governments, citizens likely to pay more attention to community governments. How one organizes the way in which one lives and works and plays is about all that remains in terms of sovereignty. And for this the local governments are as important as national governments.
Dawn of 1990s			No obvious leader anywhere in English Canada that can command national respect. Spells trouble for dealing with pending Quebec proposals. For the first time in constitutional debates the federal government finds itself as a player rather than an umpire since a more decentralized federation is among the range of possibilities.	Quebec again withdraws from first ministers' conferences. Bob Rae wins Ontario election. Citizen reaction to Meech Lake and executive federalism? Beginning of new approach to politics and policies?	Major conflicts developing. Non-Quebec citizens increasingly influenced by Charter and its implications for equal treatment across citizens and provinces. Particularly concerned about the existence of notwithstanding clause. But western premiers, for example, are demanding greater powers. Is federalism a system for "provinces" (Mulroney) or "people" (Trudeau and Charter)? In either of these, the Atlantic provinces are the most vulnerable. Not surprisingly, NB Premier McKenna is now promoting closer economic integration for the three Maritime provinces.

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