

The Community of the Canadas

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FOREWORD

This publication is the revised text of a brief presented by Professor Thomas Courchene at the invitation of the Parliamentary Commission on Quebec's Political and Constitutional Future, better known as the "Bélanger-Campeau" Commission after its co-chairmen Michel Bélanger and Jean Campeau.

Professor Courchene's brief was one of only a very few submissions invited, let alone received, from outside Quebec by the Commission in its hearings from November 1990 to January 1991. It presents an innovative and far-reaching model for constitutional reform, which he has called "The Community of the Canadas." As one of the more thoughtful and provocative analyses of Canada's current constitutional difficulties, Professor Courchene's initial paper has received much attention in the media and elsewhere.

The Institute is therefore pleased to make this paper available to a wider audience through publication in our *Reflections/Réflexions* series. This series is designed to present the personal thoughts and arguments of the authors on a range of topics relating to federalism and intergovernmental relations. It is intended to place ideas into the public forum, but the views remain those of the author and do not represent the views of the Institute of Intergovernmental Relations.

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

Institute of Intergovernmental Relations
April 1991

SOMMAIRE

La "communauté des Canadas" a été conçue comme un éventuel modèle de référence dans l'optique d'un renouvellement du fédéralisme canadien. Le modèle se caractérise par son approche inédite en matière de partage des pouvoirs. A l'exception des domaines attribués explicitement à Ottawa — desquels on retient la responsabilité du gouvernement central quant aux transferts interprovinciaux et à l'union économique —, tous les pouvoirs seraient accordés, sur une base conjointe ou concurrente, aux deux paliers de gouvernement, avec primauté conférée aux provinces. La notion de concurrence signifie ici que les deux paliers de gouvernement ont la capacité de légiférer. Toutefois, en cas de litige entre ces derniers, c'est la juridiction provinciale qui prévaudrait, de là la notion de primauté provinciale.

La particularité essentielle de ce modèle sur le plan institutionnel s'avère la Chambre haute, c'est-à-dire en l'occurrence, le "Conseil communautaire" qui remplacerait le Sénat actuel. Chacun des cinq "Canadas" (Canada-Est, Québec, Ontario, Canada-Ouest et les Territoires du Nord-Ouest/Premières Nations) disposerait d'une représentation égale au Conseil. Les provinces pourraient rester comme elles sont (et ce sera le cas vraisemblablement) mais les quatre provinces de l'Ouest et celles de l'Est, eu égard à leur représentation à la Chambre haute, seraient considérées comme deux entités égales sur le plan régional, plutôt que comme des provinces distinctes.

Les institutions communautaires demeureraient bilingues mais, en s'inspirant du modèle suisse et du rapport de la Commission Pepin-Robarts, la langue et la culture deviendraient des matières concurrentes, avec primauté provinciale.

Le Québec voudrait de toute évidence exercer sa prépondérance, sur le plan constitutionnel, dans un grand nombre de domaines. Le reste du Canada (en tout ou en partie) pourrait, quant à lui, privilégier les options suivantes: a) une décentralisation b) un "ré-équilibre" des compétences c) une centralisation ou d) le maintien du statu quo. Le présent projet n'exclut pas également que le reste du Canada puisse retenir la formule des conférences constitutionnelles afin d'assurer le maximum de coordination lors d'éventuelles modifications apportées aux pouvoirs actuels. Le fait de concevoir le Canada sous l'angle régional plutôt que provincial s'explique par l'hypothèse de l'auteur selon laquelle les provinces de l'Ouest du Canada souhaitent exercer davantage de

pouvoirs qu'elles ne le font pour l'heure. La seule façon d'y parvenir consiste donc pour ces provinces à devoir s'associer politiquement.

Le modèle proposé est symétrique dans la mesure où toutes les provinces possèdent des pouvoirs égaux (excepté à l'intérieur du Conseil communautaire). Ultimement, on peut imaginer que le Québec puisse disposer de pouvoirs plus importants comparativement aux autres provinces canadiennes, ce qui laisserait suggérer en pareil cas que les provinces anglaises auront accepté de souscrire, de leur plein gré, à cette asymétrie de fait.

La première partie de ce texte offre la toile de fond sur laquelle se dessine ce modèle. L'accent est mis sur les divers changements qui ont eu lieu récemment au Canada (et au Québec, en particulier) ainsi que sur l'impact de la mondialisation économique, actuellement en cours, sur le système politique canadien.

La "communauté des Canadas" ne constitue peut-être pas la solution parfaite à l'impasse actuelle au pays. Néanmoins, il nous faut envisager sérieusement la pertinence d'un tel modèle — du fait de la flexibilité qu'il procure —, si nous désirons préserver l'intégrité politique du pays.

ABSTRACT

The "Community of the Canadas" is intended as a potential framework for a renewed federalism. Underlying the model is a novel approach to the division of powers. Except for those areas assigned explicitly to Ottawa (which would include responsibility for interprovincial transfers and the economic union) all powers would be joint or concurrent with provincial paramountcy. Concurrence means that both levels of government can legislate. Provincial paramountcy means that in case of conflict, the provincial legislation prevails.

The major institutional feature of the model is a "Community Council" to replace the existing Senate. Each of the five "Canadas" (Canada East, Quebec, Ontario, Canada West, and the First Nations/Territories) would have equal representation on this council. Provinces could and presumably would continue to exist, but the four western and eastern provinces would have equal regional rather than equal provincial representation in the upper chamber.

Community institutions would remain bilingual, but (borrowing from the Swiss model and from the Pepin-Robarts Report) language and culture would fall under CPP (concurrence with provincial paramountcy).

Quebec would presumably exercise paramountcy across the full range of areas. The rest of Canada (in whole or in part) could a) decentralize, b) rebalance, c) centralize or d) retain the status quo. Included in the proposal is a rest-of-Canada constitutional conference to ensure the maximum coordination of any changes in actual powers. The conception of the Canada of regions rather than provinces relates to my assumption that if the provinces of Canada West wish to exercise greater powers, it will be rational to do so only in terms of a combination of provinces.

The model is symmetric — all provinces have equal powers (except in the Community Council). The end result will likely be greater powers for Quebec relative to other provinces (i.e., asymmetry), but this will be the result of deliberate choice on their part.

The first half of the paper provides the background for the model by focusing on recent developments in Canada (particularly Quebec) and in the emerging global economic environment.

The Community of the Canadas may not be the key to our constitutional impasse, but some similar model in terms of flexibility is probably essential if we are to maintain our political integrity.

THE COMMUNITY OF THE CANADAS

INTRODUCTION

After my initial surprise and, I would admit, pleasure in being included among the "experts" requested to submit papers to *La Commission sur l'avenir politique et constitutionnel du Québec*, the challenge became one of what I could usefully contribute to a process that appears, from my vantage point, to be a societal celebration in full anticipation of a "birth of a nation."¹ I am obviously not a "Québécois." Moreover, although my family was part of the francophone "diaspora" — west in our case — and finally settled in the heart of Louis Riel territory (Batoche and Duck Lake, Saskatchewan) I do not include myself as part of "les francophones hors Québec." In terms of professional credentials, my training has been in economics and my research has, with some exceptions, been concentrated in the general area of the political economy of federal-provincial fiscal and economic relations. In the last decade or so, I have (for a non-Quebecer) written rather widely on the initiatives and achievements of Quebec society. If my colleagues both in Quebec and elsewhere in Canada are a guide, my writings on Quebec are generally viewed as pro-Quebec. Nonetheless, I clearly remain an outsider to the process of the Parliamentary Commission and I would classify myself as a Canadian first and only then an Ontarian or, preferably, a Saskatchewanian, if such a word exists. More to the point, my overall perspective is that if one incorporates the economic future into the political/cultural future of Quebec, then there exist internal restructurings of Canada that are preferable for Canada *and* for Quebec than a series of two or more independent nations on the upper half of the North American continent. I raise these points relating to my underlying perspective because there is, in my view, no such thing as "expert" (i.e., independent) commentary on an issue that is so caught up in emotion and in political/economic risk, indeed uncertainty.

With these caveats in mind, the core of this submission is a radical proposal for the restructuring of Canada. I have entitled it the "Community of the Canadas." It is modelled after aspects of the European Community model, although it does not embody full sovereignty. The "Community" refers to the federal level, that is, Ottawa (or Brussels if the European Economic Community comparison is made) while the "Canadas" refer to the five designated "nations" comprising the community: Canada West, Canada East, Quebec, Ontario and

the First Nations/Territories. This model is potentially very decentralizing, at least as far as Quebec is concerned. Moreover, it would give Quebec and other provinces control over culture and language in their areas of jurisdiction. It would replace the Senate with a Federal Council or Community Council where, for example, Quebec's representation on this Council could come from the National Assembly, if it so wished. In other words, it integrates "sovereignty" and "association" but wholly in the context of what is essentially a federal model (with a few confederal trappings). At the same time the model is completely flexible in terms of the *rest-of-Canada* (ROC). For example, the ROC status quo could prevail indefinitely. Thus, it maximizes the likelihood of acceptance by Canadians outside Quebec. However, I cannot say whether they, let alone Quebec, will find it acceptable.

My concept of a Community of the Canadas, may fall short in terms of the full sovereignty aspirations of many, perhaps a majority of, Quebecers. However, it does offer a political and economic environment within which the recent impressive achievements of Quebec on the social, cultural and economic front can continue to evolve and, indeed, flourish.

The first half of the paper is really background to my proposal. Briefly, the next section reviews the rather remarkable achievements of Quebec society over the last 30 years — achievements that are the envy of most if not all other provinces. The second background section reviews the implications for federal-provincial relations and in particular centralization versus decentralization emanating from selected changes in the global and domestic economies. In a word, the trend is towards greater decentralization.

As a bridge between the background material and the Community of the Canadas model, there is a section that focuses on what I believe to be the worst possible strategy for Quebec — namely an *early* unilateral declaration of independence (UDI) with the intent of then negotiating "re-association." This surely will, as its proponents claim, wake up English Canada. This may make sense on the political front. But, upon awakening, English-speaking Canadians will discover that the UDI has also threatened their economic future. In my view, re-association except under GATT-type arrangements will become virtually impossible, which will in turn endanger both Quebec and Canada over the long term, not just during the transition to new arrangements. My perspective here is that it would be quite out of character for a society that has accomplished so much in the last few decades and that has placed so much emphasis on securing a successful economic future to opt for a solution or process that will likely embody a degree of irreversibility that has an excellent chance of unwinding both Quebec and Canada not only economically but on political/cultural grounds as well. For all our warts — Brockville, Sault Ste. Marie and the demise of Meech — we English Canadians believe in Canada and this, of necessity, means believing in Quebec. Although not music to the ears of Quebec

sovereignists, English Canada remains Quebec's best (only?) ally and contrary to what may appear in the Quebec press (*and* parts of the English Canada press) English Canadian elites are generally, perhaps wholly, sympathetic to Quebec aspirations within the context of an integrated Canada. An early UDI would destroy this.

This, then, leads me to my very radical proposal for a complete rethinking and reworking of Canada. I might add that underlying this proposal is the following two-pronged goal that, as an outsider, I have assumed to be appropriate for Quebec:

- i) "Québécois" must have the freedom to configure their society so that they can earn a North-American living standard operating in French;
- ii) These arrangements must be sustainable over time and they must be designed in such a manner that they are politically, culturally, and symbolically acceptable to all Quebecers.

While my Community of the Canadas may fall short in the eyes (and hearts) of Quebecers and other Canadians, it is motivated by these two principles in terms of Quebec as well as an equivalent set of principles for Canadians outside Quebec that address their own important and often long-standing concerns. In particular, it offers a degree of flexibility and manoeuvrability to recast their society or societies in their own likeness and image. This is critical because Quebec is not the only region or society that desires, indeed deserves, a "better deal" from Canada.

I now turn to the first of the background sections — the series of remarkable achievements by Quebec on the socio/political/ economic front.

L'EPANOUISSEMENT DU QUEBEC

Over the last 30 years Quebec has undergone not one, but two, societal transformations — "la révolution tranquille" of the 1960s and what I have elsewhere (1989) referred to as "market nationalism" of the 1980s.² This is a remarkable achievement for any society,³ particularly one that now views the constitutional framework under which these transformations took place as somehow threatening any future evolution. In order to provide some necessary background for the ensuing analysis of Quebec's constitutional options, I shall attempt (at the risk of not only oversimplification but also misrepresentation) to isolate from an economic perspective some key features of each of these societal transformations.

THE QUIET REVOLUTION

From the Quiet Revolution I would select three elements, all related. The first is the process of secularization, the high-profile aspect of which was to transfer

all aspects of social and education policy from the church to the state (and epitomized by institutional changes like the creation of a provincial Ministry of Education). The second was the conception that further social and economic progress for Quebecers would require the active participation of the state — both as socio-economic legislator and as entrepreneur. Enter the period of active “state capitalism.” From this, the third almost followed directly — the nationalization of Quebec Hydro, wrapped in the “*maîtres chez nous*” rhetoric of Lesage and Lévesque. Nationalizing Hydro accomplished a multitude of goals, not the least of which was the provision of a significant opportunity for French-speaking Quebecers to occupy the upper-management echelons of a major corporation. Quebec Hydro remains to this day absolutely critical to the development prospects for Quebec. Moreover, Lavalin and SNC, both world-class engineering firms, are examples of leading-edge enterprises spun off from Hydro’s activities.

As part of the Quiet Revolution, the best and the brightest of the young Quebecers flocked to the civil service. One result was that Quebec came to possess the most professional provincial civil service, which arguably remains true to this day. Moreover, because of Quebec’s opting-out policies, its civil service acquired expertise over a range of areas much broader than those of the other provinces. This became very evident in the discussions over Canada’s public pension system where Quebec’s input not only influenced the structure of the CPP but then the province opted for its own QPP, replete with the Caisse de dépôt. Finally an important adjunct of the Quiet Revolution was the Trudeau Liberals’ policy of official bilingualism and particularly of a bilingual federal civil service. While I recognize fully the philosophical rift between a territorial and a pan-Canadian approach to bilingualism, it is nonetheless the case that in this time frame the official-languages policy played a critical role in expanding the boundaries within which Quebecers and indeed all Canadians could operate in French. To be sure, these policies did generate a backlash in some quarters of English Canada — Brockville and Sault Ste. Marie are the most recent manifestations. But what tends to be overlooked is the other side of the coin, namely that thousands of English Canadians enrolled in French immersion programs. Quebecers should realize, even if they do not appreciate, that this represented a willing accommodation on the part of English Canadians to what they *perceived* to be their own best interests *and* the best interests of Quebec and Canada. Moreover, it laid the basis for the understanding and acceptance of Bill 101.

While obviously central in its own right, Bill 101 was really the link between the two transformations. Under the economic perspective adopted here, Bill 101 was not so much a cultural and linguistic measure as it was an economic one — French as the language of work. With the civil service no longer able to absorb the new wave of graduating Quebecers, Bill 101 ensured that they now

had easier access to the upper echelons, and to the board rooms, of multiprovincial and multinational enterprises operating in Quebec. Business schools rather than law and public administration progressively began to attract young Québécois.

Then came the referendum. Support for separatism was probably already on the wane. But the victory of the "NO" forces had a massive cathartic impact on Quebecers. Virtually immediately, independence became a non-issue. So did further politicization of major policy issues. Culturally and linguistically confident, in firm control over the functions of state, and now in senior management positions in large enterprises, Quebecers took the logical next step in the process of gaining greater mastery over their economic destiny, namely seeking equity control of small and medium-sized enterprises and ensuring that selected key institutions facilitated this new venture. Enter the series of initiatives introduced by the Parti Québécois (PQ). State capitalism was giving way to peoples' capitalism.

MARKET NATIONALISM

The post-1980 message of Lévesque, Parizeau and company was clear — get the economics on side for its own sake and also in anticipation of a future referendum. To accomplish this it would in turn be essential to:

- build a much stronger corporate base;
- begin to put Quebec's fiscal house in order;
- develop a self-sustaining financial-institution network;
- decrease dependency on and economic ties to Ottawa and the rest of Canada (e.g., free trade);
- encourage self-reliance and an outward-looking mentality.

Not surprisingly, perhaps, this *was* the PQ agenda, post-referendum. Moreover, and consistent with the evolutionary thrust of this analysis, on the economics front it *remains* the agenda of the Bourassa Liberals.

The role of the state in Quebec has not so much been diminished as transformed. *L'État entrepreneur* has given way to *l'État catalyseur*. Thus, the essence of market nationalism was that the principal avenue by which Quebec would secure its long-term economic viability would be by a dynamic outward-looking private sector owned and controlled by Quebecers but aided and abetted by the state.

Further evidence that the Quiet Revolution's emphasis on the state and that market nationalism's emphasis on the private sector are part of the same evolutionary continuum is that many of Quebec's leading businessmen and entrepreneurs today were in the public sector during the Quiet Revolution (or, more generally, prior to the market nationalism thrust). In part, this explains the

incredible pace of change in Quebec. In many ways the homogeneity of interests in the province, whether cast along language or culture or economic lines, implies that Quebec society has "family" characteristics in the sense that a convergence of opinion leaders on an issue spreads quickly through the society, especially when the leaders are in effect not only saying "do as I say," but also "do as I do." As an important aside, with the Bélanger-Campeau Commission this quick convergence is occurring again, this time around "sovereignty."

This leads directly to (or rather explains) yet other significant features of the new Quebec — the commonality of interest between business and government in sharp contrast to the "two solitudes" in Ontario on the one hand and the continuity of policy from the post-referendum Lévesque regime to Bourassa's Liberals on the other. Contrast this last point to events at the national arena where most of the economic agenda of Trudeau's "second coming" has been overturned by the Mulroney Tories (Courchene, 1991).

THE BOURASSA LIBERALS: CONTINUITY IN THE ECONOMIC SPHERE

As already indicated, Bourassa's "second coming" built further on this economic base. This is best illustrated by noting that one of the Liberals' first initiatives was to commission three blueprints for the economic future of Quebec. These were not ordinary task forces. They were headed by cabinet ministers or elected members with expertise in economic and financial affairs. The resulting trilogy of reports — Pierre Fortier on privatization, Paul Gobeil on the role of government and more generally on the delivery of socio-economic programs; and Reed Scowen on deregulation — represents, in my view, the most comprehensive market-oriented yet equity-conscious approach to socio-economic policy ever promulgated by any government in the western world. No other provincial government could have possibly produced such comprehensive blueprints, and certainly not Ontario. To be sure, much of the substance of these reports has not seen the legislative light of day. But the underlying framework still rings true.

In terms of more recent initiatives, I shall focus only on two areas. The first relates to the Canada-U.S. Free Trade Agreement (FTA). While it is probably wrong to suggest that Quebec gave Canada free trade, it is appropriate to note that had the Tories captured only 42 instead of 63 of the 75 Quebec seats (still a comfortable majority) Mulroney would not have had his 1988 majority and the FTA would likely have been stymied. Financial regulation is the second area. Not only has Quebec been innovating here for most of the 1980s, but the "Quebec model" is beginning to drive overall Canadian legislation. And when Canada is not following suit, there is at least a "hands off" approach to Quebec initiatives. These include privileging Quebec's indigenous financial institutions — allowing the caisses populaires to issue "equity" capital and allowing the

mutuals to demutualize, to joint-venture and to acquire downstream holdings. More recently, Quebec has proposed the creation of "mammoth corporations" (to use Pierre Fortier's term) which would intermingle finance and commerce and which, among other activities, would attempt to ensure that selected commercial "stars" remain Quebec-based. On the Quebec legislative plate now are proposals for allowing mutuals to establish joint ventures with foreign financial institutions. These recent initiatives are completely foreign to the banking/financial tradition in the rest-of-Canada and the intermingling of finance and commerce is foreign to the entire anglo-saxon tradition. Yet, Quebec is well on the way to implementing these initiatives.

WHAT THEN IS THE PROBLEM?

If Quebec can accomplish all of this under the current constitutional arrangements, why is there such concern that their cultural and economic future is jeopardized by remaining a full partner in the Canadian federation? To this question one might add a point not usually recognized by English Canadians, that over this period Quebec received *no special favours* on the constitutional front. But *other provinces did*. Specifically, in the context of the *Constitution Act, 1982*, Newfoundland asked for and received the right to hire preferentially for the offshore. And the west received special taxation powers for its resource sector.

Moreover, while there is obviously some concern in English Canada about Quebec's demands, there is also envy in terms of Quebec's remarkable accomplishments. Many provinces now have Quebec Stock Savings Plan (QSSP)-type provisions in place and several are trying to emulate the role of the Caisse de dépôt for their economies. More generally, they are searching for the degree of internal confidence and dynamism and entrepreneurial spirit that is flourishing in Quebec.

The question remains, however: Where and how is the constitution constraining Quebec? Alternatively, how would other arrangements be less constraining? In addressing this issue, it is convenient to fall back on a quotation from Ramsay Cook:

Nationalism...is about ethnic survival and growth. It is also about self-interest and power...Consequently, nationalism struggles are not only about *home rule* but also, perhaps even primarily, about *who should rule at home*. (1986, pp. 12-13, emphasis added).

My interpretation of the Quiet Revolution and market nationalism is that they were all about "who should rule at home." Post-Meech Lake, however, the issue has increasingly become "home rule" (i.e., sovereignty).

Symbolism

One answer to why the constitution is constraining relates to the powerful negative symbolism associated with the defeat of Meech. (Quebec said YES to Canada in 1980: Canada said NO to Quebec in 1990). With their new-found confidence in their home-grown entrepreneurial and business sector ("who can rule at home"), Quebecers appear increasingly willing to contemplate "home rule" as the appropriate response. If symbol is all that is at stake, I shall later argue that a response couched in terms of a declaration of "sovereignty" as a prelude to "re-association" may be an extremely risky strategy for Quebec (and for the country) because it could lead to irreversibilities. For example, it may preclude "re-association" other than through GATT, and, therefore, generate enormous transitional difficulties that could severely complicate further economic evolution.

Substance

A more important answer, at least from my vantage point, has to do with the *Constitution Act, 1982* and the manner in which it might ultimately reduce Quebec's powers to legislate across both cultural and economic fronts. In Andrew Petter's words:

The 1982 amendment undermined the constitution's stabilizing and unifying influence by formalizing and thereby privileging political values that were acceptable to elites in English Canada, but were inimical to elites in Quebec. The commitments made in 1982 to pan-Canadian identity over regional identity, to individual bilingualism over territorial bilingualism and to provincial equality over special status for Quebec have contributed to a deepening sense of anger and alienation among Quebec nationalists (including moderate nationalists), fueling demands for further constitutional reform. At the same time, the political values that were formalized in 1982 have attracted growing support from other Canadians, making it increasingly difficult to dislodge or counterbalance those values in order to satisfy the concerns of Quebec nationalists. This difficulty is heightened by an extremely rigid and procedurally complex amending formula. It is further heightened by the presence of groups whose interest in constitutional reform was recognized during the 1982 amendment process, and who now have an acknowledged stake in future constitutional amendment. Aboriginal groups, for example, continue to resent the failure of the 1982 amendments and subsequent constitutional negotiations to protect adequately their rights, and have promised to block changes that fail to rectify this injustice. Meanwhile women's and multicultural groups, both of whom won partial victories in 1982, have let it be known that they will not tolerate amendments that could weaken the Constitution's commitment to values with which they identify (1990).

It was this combination of factors (helped substantially by Bourassa's use of the notwithstanding clause with Bill 178) that led to the demise of Meech. More problematical, these forces imply that future "Quebec rounds" may meet the

same fate. In spite of the fact that there are also group rights embedded in the Charter and in spite of the fact that the Charter is selective in its application, it is my view that this confrontation between English Canada's new "distinctiveness" (i.e., Charter rights) and Quebec's traditional collective-rights approach is the foremost hurdle to our national integrity. Phrased differently, armed with the Charter the rest-of-Canada was able to defeat Quebec's "distinct society" clause. However, Quebec is now backed into a corner where it apparently *cannot counter* English Canada's "distinct-society" clause (the Charter).⁴ Like the Meech Lake version of the "distinct society" clause,⁵ the concerns about the Charter for Quebec may be more perceived than real. Nonetheless, if ultimately confronted with a full-blown Charter, replete with the removal of the notwithstanding clause, Quebec will really have no choice but to "go it alone." There may be a tragic irony to all of this. English Canadians are utilizing an American and Americanizing instrument (the Charter) to rend the nation which, in turn, will leave them at the mercy of the Americans!

This is much more than simply a Quebec issue: it is at the heart of our conception of a nation occupying the upper half of North America and wishing to avoid being swallowed up by the giant to the south. If Canada cannot accommodate Quebec's distinctiveness, then it cannot accommodate the First Nations' distinctiveness nor, in a few decades, the distinctiveness of the west coast, which will by then be Pacific Rim oriented and perhaps significantly Pacific Rim peopled.

This impasse has so concerned me that I have been led to argue (probably in error) that the ratification of the Charter by the federal government and all provinces except Quebec falls fully under section 94 of the *Constitution Act, 1867* and, therefore, does *not* apply to Quebec, since section 94 explicitly excludes Quebec. Specifically, this provision represents an amending formula for non-Quebec Canada to enable it to consolidate and unify its laws as they effect property and civil rights.⁶

The remainder of the paper is designed to search for other alternatives to bridge this impasse, beginning with a focus on the manner in which the emerging global environment will impinge on the operations of the Canadian federal system.

GLOBALIZATION AND THE CANADIAN FEDERATION

The purpose of this section is to argue that global forces will lead to a rethinking and restructuring of major aspects of our federation irrespective of the past or future of Quebec-Canada relations. Drawing very briefly from other work I have done (1990a), it seems to me that globalization and the telecomputations revolution will affect the role of national governments in at least four ways.⁷ 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 former multinational corporations, which entered countries subject to a host of "commitments," transnationals increasingly enter under "national treatment" conditions, i.e., treatment on par with national corporations. This has substantial implications. For example, one will no longer be able to speak meaningfully about a "national" production economy. Production will increasingly be international. One obvious consequence is that we must rethink and rework much of the welfare state, since national welfare states are in large measure geared to national production machines.

Second, it is the transnational corporation (i.e., the international private sector) not the international public sector that is driving globalization. What this means is that national governments will increasingly find that activities that used to be done at the national level will now have to be passed "upwards," partly as a countervail to the globalizing transnationals. The Bank for International Settlements (BIS) capital adequacy rules for financial institutions are a good example here. More than a dozen nations have committed themselves to abide by these international standards. Moreover, the European Community itself is probably part of this trend, particularly if it initiates EC-wide taxation in the area, say, of corporation income taxation. This trend towards international regulation, international standards and confederal or EC-type arrangements is bound to expand and multiply.

Two other forces are passing power "downwards" from nation states. First globalization and the information revolution are privileging citizens. There are many facets to this. For example, as recent as a decade ago, "transmitters" determined the information flow; increasingly "receptors" will. Indeed, the thesis of Kenichi Ohmae's current bestseller, *The Borderless World*, is that globalization is really about consumer sovereignty: "performance standards are now set in the global marketplace by those that buy the products, not those that make them or regulate them" (1990, dustjacket). Quebecers are all too aware of this trend in light of the restrictions placed by Vermont on the recent Hydro sale. The essential point is that consumers (both individually and as part of local, national or international groups of like-minded citizens) are exerting substantial power, which will surely complicate old-style governance for unitary and federal states alike.

A second, and more intriguing point is that globalization is spreading across the world through a network of "international" cities. These international cities (Montreal, Toronto and Vancouver for Canada) are the critical national nodes in the global communications and trading networks, i.e. the essential cultural and economic "connectors" (to use Jane Jacobs' terminology) outward from Montreal to Frankfurt and Geneva and inward to Quebec City and Sherbrooke. Over the last decade nothing much has changed in terms of the Ottawa-Paris relationship but much has changed in terms of the Montreal-Paris relationship.

The dilemma here for Canadian federalism is obvious: these cities are "constitutionless." They are creatures of their respective provincial governments. But they will soon become much more influential. This poses rather unique problems because, for example, Saskatchewan's global city is not in the province and the Maritimes international city is (arguably) not even in the country. This again poses a constraint on the role and influence of national, even provincial, governments.

I shall limit myself to only one implication from all of this. In the face of a diminished role in the economic, regulatory and even cultural sphere for national governments, citizens will increasingly view "sovereignty" as the ability to have some influence on how they live and work and play. One can argue whether or not the level of government to deliver this is the international city or the provincial government or the local government, but under our federal system it is clearly *not* the national government. Indeed, will there be much left of "sovereignty" in the millenium other than distinct societies?

DOMESTIC FORCES

It is difficult to escape the conclusion that the global forces are inherently decentralizing in terms of the internal workings of the federation. However, there are several domestic forces that are also pointing in the same direction. The first of these is fiscal-driven decentralization.

FISCAL-DRIVEN DECENTRALIZATION

Despite the fact that many non-Quebec Canadians tend to look to Ottawa to play a greater role in the economy, the reality of the last few years is that the federal deficit and debt burden is driving Canada into unprecedented decentralization. Leading the way here is the current two-year freeze in established programs' financing (EPF) after which the EPF growth will be the growth rate of the Gross National Product (GNP) minus 3 percent.⁸ 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 2010.⁹ Thus, the dozen or so billion dollars 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 share of provincial to federal taxes increases. Second, if the provinces react by cutting back these programs or redesigning them, this is also 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 on the Canada Assistance Plan (for the "have" provinces) and the unemployment insurance (UI) strictures (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. In an intriguing way, there have been two polar responses to this. On the one hand, Quebec has signalled its intention to integrate its sales tax with the GST (and will collect it for Ottawa and presumably will, at Ottawa's expense, employ Quebecers rather than "feds"). Quebec will thus 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, Saskatchewan, in July, 1990, have argued that the combination of "deficit-shifting" and the GST-driven revenue constraints may require that they develop, *à la* Quebec, their own, separate personal-income-tax system. Indeed, British Columbia has announced that it will issue a position paper shortly on a personal-income-tax system for B.C.¹⁰ Both of these responses point in the direction of increased decentralization.

THE FTA

The defining constitutional rhetoric in Canada and the United States — "peace, order and good government" for Canada and "life, liberty and the pursuit of happiness" for the U.S. — appear to be reflected in our respective citizen-state relationships. In effect, the emphasis in the U.S. is more on the "means" with little emphasis on whether or not the "ends" are appropriate. In Canada, the emphasis has been far more on "ends" with a willingness to use a wide variety of means to achieve these ends.

The FTA with its reliance on markets resonates more, as Simpson (1987) notes, with life, liberty and the pursuit of happiness than it does with peace, order and good government. Phrased differently, while the FTA need not constrain the "ends" towards which Canada and Canadians aim, it certainly constrains the "means" that can be used to achieve these ends. Specifically, given that the FTA embraces markets it is inherently decentralizing, since markets themselves are inherently decentralizing.

The FTA is decentralizing in yet another sense. The political economy of the east-west transfer system will come under increasing scrutiny in the context of FTA north-south integration. In particular, Ontario's magnanimity in terms of existing regional transfers contains a healthy dose of "Ontario first." As long as Canadian trade flowed largely east-west, with Ontario the north-south conduit to the U.S., the second (and future) round spending impacts of these

regional 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 erstwhile 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 North Carolina or California. At a political level, this will surely erode support for such transfers, particularly the ones that privilege "place" rather than people.

This may or may not be viewed as decentralizing, but what is clear is that our tradition of sheltering various regions of the country from market forces is going to become progressively more difficult both economically, politically and perhaps "legally" under the FTA.

THE CHARTER

Countering the above centrifugal forces on the economic front is the role of the Canadian Charter of Rights and Freedoms in conditioning socio-political attitudes, particularly of English Canadians. While one can argue that the Charter, too, is decentralizing in that it bestows rights, via the courts, on individuals and designated groups (aboriginals, linguistic minorities, multi-cultural groups, gender equality) it is nonetheless the case that the "language of rights is a Canadian language not a provincial language" (Cairns, 1984): "the resultant rights and freedoms [are] country wide in scope, enforced by a national supreme court, and entrenched in a national constitution" (Cairns, 1979, p. 354). The Charter has caught on to such a degree that English-speaking Canadians are beginning to develop a new "non-territorial" conception of the federation, one that has little to do with traditional federal-provincial cleavages but rather with cleavages between these newly enshrined pan-Canadian interests on the one hand and vested interests or elites on the other.

What is emerging, then, is the juxtaposition of economics (and fiscally) driven decentralization and political or culturally driven centralization. As highlighted earlier, the cleavages are really much deeper. Quebecers cannot tolerate a conception of Canada where they become "citizens" by virtue of a set of rights adjudicated by a national Supreme Court and where any "collective rights" legislation must rely on the notwithstanding clause which is then open to criticism from the rest-of-Canada. This is inherently inimical to the conception of Quebec as a society. More to the point, it runs counter to the conception of Canada as embodied in the *Constitution Act, 1867* and as practised for over a century prior to 1982. English Canadians have to come to grips with the reality that a full blown "Charter Canada" means no Canada at all!

RESUME

The analysis to this point can be summarized rather succinctly. First, Quebec has made major societal and economic strides over the last few decades. While the initiatives have obviously come from Quebec, it is probably fair to say that the rest-of-Canada has welcomed these initiatives and, where they have not, they have at least accommodated them. Moreover, all of this was accomplished under the existing constitutional arrangements. Why should the future evolution for Quebec and Quebecers on this score be different than the recent past? One answer to this is that the Charter is inimical to Quebecers' conception of themselves and their society. Thus, the second summary point is that for any future arrangements to be acceptable to Quebec, control over language and culture must reside with the province. Third, Quebecers moreso than other Canadians (or at least moreso than most other Canadians) would prefer a much more decentralized version of the federation. Fourth, both global and domestic forces are driving us in the direction of greater decentralization and a weakened role in traditional areas for the national government. My reading is that even if Meech had not appeared on the scene, Canada would be much more decentralized in the year 2000 than it was in 1980. Thus, the "powers" issue in any new arrangement is not (or at least *ought* not to be) as problematical as it would have been in, say, 1980. Finally, apart from the "fun" and "symbol" of having one's own country, there will be correspondingly much less value to traditional sovereignty in the year 2000 than there was in 1980. Sovereignty in a global era will increasingly be about distinct societies or, as noted earlier, about having influence on how citizens live and work and play.

The challenge facing not only Quebec but all of Canada is how to adapt to, or accommodate, all of these features. This is the purpose of the remainder of the paper.

SOVEREIGNTY FIRST, THEN RE-ASSOCIATION

As I read the reports of the evidence before, and proceedings of, the Bélanger-Campeau Commission and as I interpret the many polls emanating from Quebec, the single most striking message that I draw from all of this is how different it is from 1980. Quebecers now know that, if they wish, they have the will (and likely the votes) to "go it alone." The issue still stirs up incredible emotion in Quebec, but none (or little) of the societal and even family confrontation that characterized 1980. In other words, Quebecers now have the confidence in themselves and in their society to recognize that *they, and not the rest of Canada, will determine key aspects of their future*. As this sense of control over their destiny begins to permeate throughout Quebec society, as well as throughout Canadian society, my view is that the overall tenor of the discussion in both Quebec and the rest-of-Canada will begin to move off the emotional plane and

move on to a more strategic plane. Thus, I fully expect that Quebecers will begin to ask themselves the following: "We know that we have the will and ability to become a separate country, but is there a set of arrangements within Canada that is not only less risky but that might lead to an even greater flourishing of the Quebec language, culture and living standard?" I think that there is. Likewise, many, but obviously not all English Canadians (who are now, or at least the elites are, by and large totally shocked by what is occurring in Quebec) will begin to ask themselves: "Is there not a positive-sum game whereby we can accommodate Quebec and other regions and yet continue to reap the benefits of a society that remains distinct from that which exists south of the border?" I think that there is. However, given the momentum of what is transpiring in Quebec, this new "Canadian game" has to go well beyond tinkering and symbols. The proposal that follows, tentatively entitled "The Community of the Canadas," is, accordingly, very radical and is based largely on the European model, although the critically important areas of culture and language also draw on the Swiss experience.

Prior to addressing this model, however, I want to devote some attention to the process dimension which appears to be garnering support in Quebec, namely a quick declaration of "sovereignty" (partly on principle and partly to wake-up English Canada) and then negotiating the terms of "re-association."

Of all the strategies that Quebec and Quebecers might adopt the one most fraught with risk is an early unilateral declaration of independence as a prelude to negotiating association or re-association with the rest-of-Canada. This has nothing to do with the ability of Quebecers to manage change, since throughout I am assuming that they have both the determination and the capability to excel on this score. Rather, it has to do with the nature of the challenges they may be forced to confront. I shall focus on two general types of challenges, one political/constitutional and one economic.

Quebec cannot really declare itself "sovereign." What it can do is, by a referendum, declare itself independent from Canada. Sovereignty comes when other nations recognize this declaration of independence. Suppose, however, that the Grand Council of the Cree holds a coincident referendum in which they declare themselves independent from Quebec or a separate nation within Quebec or a part of Canada (e.g., to restore northern Quebec to its pre-1912 status). What and who does Canada recognize? What will other nations do? Does the fact that the United Nations (UN) has a subcommittee on aboriginal peoples and that the Grand Council of the Cree has nongovernment observer status at the UN carry any weight? And so on. This particular scenario may be off base, but the general range of issues relating to boundaries and "nations" will surely surface in one form or another.

The challenges on the economic front come precisely because such a unilateral declaration of independence would wake English Canada up — and on

awakening they would find both their political and economic future in doubt. This is hardly conducive to re-association, particularly from the vantage point of western Canada. Why would western Canada agree to reconstituting a commercial policy that subsidizes Quebec clothing and textile workers or more generally one that continues the degree of subsidization to the Atlantic region? And on and on. The point is that once the Canadian "fabric" is rended, it is unlikely that it can ever be put together again. There will, of course, be substantial incentives for the natural economic allies, Quebec and Ontario, to forge a deal between themselves. But this will be viewed by western Canada as a "coup" by the centre to reconstitute the country along Quebec-Ontario terms. In effect, this would be an "expulsion" of western Canada which would, in turn, feel (with some justification) that it can now exit without taking any of the federal debt.

Now that the issue of the federal debt has been broached, setting aside the international-capital-market implications of a Unilateral Declaration of Independence (UDI), it will take something like a decade for Quebec to float its share of the national debt (Côté, 1990). For this to come to pass, Quebec-Canada relations must proceed more smoothly than they are likely to in the face of a UDI as an opening salvo. My colleague Douglas Purvis refers to this as "the bonds that tie."

This does not mean that some version of a UDI can be avoided as the process unfolds or that some alternative referendum that stops short of a UDI would be inappropriate. Rather it argues for adequate prior negotiation in order that the attendant risks and uncertainties become more manageable for both sides. There remains Quebec's concern that English Canadians are "asleep at the helm," as it were. Needless to say, it is also a principal concern of many of us in non-Quebec Canada. But this will sort itself out rather dramatically once the story hits the cover pages of any or all of *Time*, *The Economist*, *The Wall Street Journal* or *The New York Times*. Moreover, the release of the Allaire Report has reverberated resoundingly across the country as well as in the corridors of power. The same will apply to the release of the findings of the Bélanger-Campeau Commission. We will not need a UDI to wake us up!

More importantly, my underlying approach to the Quebec-Canada impasse is that there is a preferable strategy, to which I now turn.

THE COMMUNITY OF THE CANADAS

Elsewhere (1990a, 1990b), I have argued for a reconstituted Canada that would embody asymmetry (special status) in practice but symmetry in principle. The mechanism for accomplishing this might be section 94: all provinces would receive more powers and non-Quebec Canada could then utilize section 94 to transfer these powers back to Ottawa. While this approach still has some

potential, I think that the march of events have "passed it by," although the Allaire Report (1991) suggests this as an option for the rest-of-Canada. More is needed, not only with respect to powers, but as well to symbol.

Accordingly, the proposal that follows is motivated not by any firm belief that it is in any way the "ideal" model, but rather that it is essential that we begin to break away from the existing Canadian federal mold and place alternative approaches on the bargaining table. For presentation purposes, I shall focus first on the broad characteristics of the model. This will be followed by an elaboration of some of its more important (and, no doubt controversial) features. The final section will deal with aspects of process, i.e., can we get there from here?

THE COMMUNITY OF THE CANADAS: OVERVIEW

Powers

The "reworked" division of powers would consist of two broad provisions. The first of these would isolate a set of powers that would remain at the Community level, e.g., external affairs, commercial policy, the maintenance of the internal economic union and internal economic harmonization generally, weights and measures, monetary policy, aspects of fiscal policy, redistributive policies with respect to the Community nations, and so on. My list is no better than anyone else's here, but the message should be rather clear, namely that the Community government should be entrusted with powers that, by their very nature, relate to the Community rather than to member nations. This list would result in a reduction of existing exclusive federal powers, but it would be more generous to Ottawa than is the Allaire Report (1991).

All other existing federal powers (and for that matter *all* other powers) should be assigned *jointly* or *concurrently* to *both* levels of government *with provincial or community-member paramountcy*. David Milne (1991) conveniently refers to this as CPP (concurrency with *provincial paramountcy*). Concurrency means that both levels of government can legislate in these areas. Provincial paramountcy implies that where legislation of the two levels of government is conflicting, provincial legislation will prevail. Therefore, the key characteristic of the model in terms of powers is "decentralization if necessary, but not necessarily decentralization." What this means is that Quebec, for example, can access its new powers *immediately*. Others may wish to proceed more slowly or perhaps not at all. In this case they can keep these functions at the Community level.

Among the powers falling under CPP would be language and culture. Community institutions relating to exclusive community powers would remain bilingual. This is a version of the Swiss model where rights are generally national in scope except for language and culture, which are basically

territorial. One should note that this is broadly in line with one of the key recommendations of the Pepin-Robarts Report (1979). My personal view is that while this will have important *symbolic* implications for all community members, it is not likely to alter much of the substance of language legislation in those areas where French or English represent substantial minorities.

Community Institutions

The structure of the Community level government would remain bicameral. The lower chamber, the House of Commons or House of Representatives, would continue to be popularly elected, along "Rep-by-Pop" lines. The upper chamber would be a Federal Council or Community Council, somewhat along the Beige Paper lines (Quebec Liberal Party, 1980). Specifically, there would be equal representation from the five Community nations — Canada East, Quebec; Ontario, Canada West and the First Nations/Territories. To be sure, others might opt for a different "community of nations." This particular configuration maintains, roughly, the existing voting power in the Senate, except that First Nations/Territories are given additional weight. Now to some details.

House of Commons. The popularly elected assembly (House of Commons) would function pretty well as it does now with the important difference that it may become increasingly difficult to sustain the Westminster model (i.e., to sustain parliamentary government). This is discussed more fully below. The Commons would continue to be the primary legislative body, with the prime minister and the cabinet coming from its ranks. Not much change so far.

One area that will prove challenging, however, is whether all members (MPs) will have identical voting rights. Specifically, should MPs be able to vote on measures where their home "nation" has exercised paramountcy? At the time of my appearance before Bélanger-Campeau, my answer was "yes" and it remains "yes" despite the fact that this aspect of the paper has attracted substantial criticism. Hence, some elaboration is warranted.

The first point to make is that there is an important difference between the present model which embodies CPP and symmetric powers on the one hand and an asymmetric-powers (special-status) model where Quebec would have powers that other provinces do not have on the other. In this latter case, it is difficult to avoid asymmetric powers to MPs, i.e., constrained powers for Quebec MPs. Federal or Community legislation does not, by definition, apply to Quebec in these areas so that Quebec MPs should play no role in the legislative process.

CPP is quite different, however. The federal government can still legislate for the entire Community in these areas. In advance, it is not at all evident that provinces will find such legislation problematical to the degree that they will exercise paramountcy (i.e., pass alternative legislation). Moreover, since the possibility always exists that provinces which previously asserted paramountcy could opt back into federal legislation, it seems inappropriate for MPs of such

provinces to be relegated to second-class status. That they may not wish to exercise their right to vote on such measures is quite another matter.

A second area of concern is that the federal government could fall (i.e., lose a confidence vote) on an issue coming under CPP simply because Quebec MPs, for example, decide to abstain. There are two ways to address this problem. The first is, admittedly, a bit of a cop out — confidence votes would be restricted to those areas in exclusive Community jurisdiction. In other words, a government could not fall on a vote relating to an area coming under CPP.

The second approach is more general, namely that we are likely going to have to rethink aspects of parliamentary government in any event. From the perspective of Spring, 1991, it appears that the next Parliament could have representatives from five, perhaps six, parties. (Tories, Liberals, NDP, Reform, Bloc Québécois and the Confederation of Regions). The likelihood is not only a minority government, but one with shifting coalitions depending on the issue at hand. As a result, we are likely to move considerably towards the current practice in the British Parliament which moderates party discipline by spelling out which votes involve confidence and which do not.

The Community Council. Each of the five designated nations or Community members would have equal representation on the Federal Council. How these representatives are selected is left to the discretion of the Community members. Some member nations, presumably including Quebec, may wish to appoint them, perhaps from sitting members in the National Assembly. This is "confederal" in the sense that Quebec will be represented on the Federal Council in its "own right," rather than by popularly elected members. Some may prefer elections. Some may opt for a combination of these two. Note that while representation on the Federal Council is on the basis of equality among the five Community members, it is not necessary that Canada West, for example, constitute itself into a single political unit. The provinces can remain as they are. In terms of Federal Council representation, however, the four existing western provinces will be treated as *one* member state (but not required to cast a "bloc" vote).

The reader will recognize that this Community Council structure does not square well with Alberta's, and more generally the west's, aspirations for provincial equality in the upper chamber. Admittedly, the full Triple-E Senate approach (equal, elected, effective) is not inconsistent with the proposed division of powers under the Community of the Canadas. However, the rationale for five-"nation" rather than ten-province equality rests on two criteria that differ from the criteria that underlie, say, the U.S. federation with its two Senators per state. First, whether the rest-of-Canada likes it or not, the constitutional rhetoric is shifting from "province" to "nation." This is not limited to the Canadian scene. The Catalans, the Scots, the Bretons, and other ethnic groups in other countries, are increasingly viewing themselves as "nations" and

hoping to link themselves directly to Brussels. The rest-of-Canada may be only one or two "nations" rather than four. But it certainly is not nine (or ten with the First Nations). The second rationale is related to the first. If provinces other than Quebec (and Ontario) wish to exert paramouncy over a range of new powers, this is unlikely to make sense unless they do so in the context of "regional" groupings. More on this later.

The Federal Council will not, in general, be a legislative body in the sense of initiating measures. However, it would ratify all legislation from the lower chamber. Double majorities may be required for certain areas that relate to the patrimony of individual Community members. Even with greater decentralization, this may be important for Quebec and the First Nations/Territories and even for Canada West, for example, as it desires greater integration with the Pacific Rim.

The Federal Council will also have to ratify all appointments to major Community boards and/or secretariats. This is particularly the case with respect to two areas that are clearly malfunctioning at the present time. The first of these relates to macroeconomic policy. I agree with the many representations before Bélanger-Campeau that the "parliamentary" relationship between the Bank and the Minister of Finance should be severed; with the Bank becoming more independent and autonomous in its policy role, but at the same time more responsible to its (by then meaningful) board of directors. Ratification of the lower chamber's appointments to the Bank's board would obviously come under the purview of the Federal Council. The second area is the environment and here I have no easy solution. The ongoing problem in this area is that policy with respect to the environment is becoming more and more a not-very-disguised "disallowance clause." The country, under any model, cannot long maintain itself under a set of provisions whereby the nature of environmental assessment differs markedly across megaprojects. This will be a challenge under the Community model, but since it also is a challenge under the existing arrangements it should not be viewed as a special complicating factor in any transition.

The Federal Council will have the power of "disallowance" for any sub-Community legislation that serves to fragment the internal economic union of the Community. For example, changes in social policy in Canada West that require residency periods or otherwise inhibit the free flow of people across Community member states should be disallowed at the Federal Council level. (Note that since the Council has to ratify all lower chamber legislation, this also applies to any Community legislation).

Where a Community member has "patriated" a policy area to its own legislative level, it will not be allowed to veto Community legislation in this area designed to implement policy for other members, unless, of course, this legislation contravenes the internal common market of the Community.

Finally, should the Community wish to shed one of the last vestiges of our formal ties to Britain, the Federal Council could elect, preferably on a rotating one-year basis, a president of the Community as the "head of state," as it were. The functions would be similar to those of the Governor-General, whose office would be rendered obsolete.

THE COMMUNITY OF THE CANADAS: SELECTED ISSUES

Abandoning Aspects of Party Government

The introduction of the Charter and the emphasis on "due process" has taken us some way towards a checks and balances system. The Community of the Canadas would take us yet further in this direction.

Most Canadians would presumably agree that parliamentary or responsible government has served us very well over our first century. For more than a decade now, however, one could mount a persuasive case that it is driving us apart. Briefly put, the policy "swings" have simply become too large for Canadians to handle. Examples abound — the anti-Americanism of the early 1980s (the Foreign Investment Review Agency, FIRA, and the "back-in" and Canadian content provisions of the National Energy Program, NEP) was completely overturned by the FTA; the "made-in-Canada" energy prices of the NEP era have been replaced with the market orientation of the FTA; the imposition of the *Constitution Act, 1982* and particularly the Charter on Quebec which eventually led to the Meech Lake debacle and still, in some way or another, requires "overturning"; and the institutional crisis where a government with a 14 percent rating in the polls can ram through a policy (GST) disliked by nearly 80 percent of the population.

Canadians are increasingly demanding "representative" government, not "responsible" government. This is reflected, in part, in the west's push towards a Triple-E Senate. It is difficult to conceive of ways in which a Triple-E Senate (or the Community Council) would coexist comfortably within a parliamentary democracy or a system of responsible government. On the other hand, there is "little point in establishing an elected Senate to introduce a significant element of intrastate federalism and then to make it almost meaningless by giving it a weak suspensive veto to reconcile it with responsible government" (Smiley and Watts, 1986, p. 130).

This shift away from parliamentary government is, in part, also reflected in the demise of national parties. Albertans have time and again seen their MPs side with national parties rather than vote constituents' interests. If one cannot change the institutions of government, then at least one can change parties and, in particular, opt for regional parties which, by definition, will (or should!) vote regional interests. While regional parties are in principle fully consistent with responsible government, the fact is that the origin of the Reform Party has its

roots in attempting to offset the implications of responsible or party government.

The bottom line here is that the Community of the Canadas does *not* require that Canadians reject the parliamentary system. What is true, however, is that this model, like the introduction of a meaningful Triple-E Senate, would contribute to the pressures on our system of responsible government.

Centralization/Decentralization

The proposal embodies, in principle at least, a marked decentralization of powers. However, two important observations are warranted here.

First, there is little question about what Quebec will do — it will remain poised to exercise its paramourncy. (Note that it may not need to do so if Community legislation meets the province's needs). It is far less clear how the other provinces or "nations" will react. The rest-of-Canada (ROC), in whole or in part, could maintain the status quo. They could "rebalance" by drawing some powers down, and by passing others upward to the Community level. Or, they could follow Quebec and exercise paramourncy. For the provinces in Canada West, for example, accessing greater powers would probably mean doing so within the context of some increased economic and/or political integration. It does not make sense for Alberta to exercise paramourncy over manpower policy. It might make sense for Canada West to do so.

An integral component of the Community of the Canadas is a requirement that the ROC hold a constitutional conference prior to altering the status quo. The rationale for this is: a) to insure that any exercise of paramourncy takes place in an orderly and coordinated way, and b) to ascertain whether there is scope for common Community legislation that would obviate the need for provincial paramourncy.

Ultimately, whether parts of the ROC access these new powers will likely depend on the degree to which English-speaking Canada is more than one nation.¹¹ If the nine non-Quebec provinces comprise a distinct society, the end result for the ROC will likely be greater harmonization and perhaps greater centralization. If, however, Canada West's emerging needs and challenges are very different from those of, say, Ontario then the result will presumably be some difference in the devolution of powers or between these two "nations."

Implicit in this proposal is a transfer of tax points where competences are devolved. This would be done in a manner that ensures that no net fiscal benefit attaches to decentralization. However, any transfer of tax points must recognize the debt-servicing needs of the Community as well as the necessity of ensuring that Ottawa retains control of cyclically sensitive tax bases sufficient to discharge its stabilization role.

This represents, as noted, a potential substantial decentralization. However, this must be set against the manner in which the world is evolving. By the

millenium, it is likely that the Community will have "signed on" to all sorts of international agreements — environmental, financial institutions, trading arrangements, competition/merger policy agreements, numerous industry-specific arrangements (telecommunications, airlines, agriculture, aspects of resources, etc.), codes of civil rights, etc. The point of this is that decentralization in the year 2000 is no longer the same issue that it was in, say, 1980.

First Nations' Representation on the Federal Council

Among the more innovative (and surely controversial) features of the proposal is equal member-state representation for the First Nations/Territories on the Federal Council. Effectively, this gives some power of veto over legislation at any level that erodes their enshrined rights. It does more than this, however. It recognizes that the First Nations have to be part of any reconstitution of the federation. Moreover, as argued earlier, they are likely also to play a significant role in any break-up of the federation.

My personal preference here would be to go much further — to allow the First Nations to incorporate their existing reserves into a formal territorial, but noncontiguous, province (see Courchene, 1990c): a "fax-machine" province, as it were. In effect, Indian Affairs is now a "provincial government," operated out of Ottawa, since many of its responsibilities (social policy, roads, health, education) are really "provincial" responsibilities. This option would transfer Indian Affairs and its responsibilities to the First Nations themselves. But I have not included this aspect as an integral part of the Community of the Canadas.

None of this has any formal implications for existing land claims (although Canadians would do well to note, as my colleague John McDougall has, that "land to the First Nations is what language is to the Québécois"). They are currently progressing along a separate track and would continue to do so.

Flexibility, Symmetry, etc.

The Community of the Canadas is explicitly designed to maximize flexibility and to minimize change for those provinces or Community members that prefer much or all of the status quo. Since most powers will be concurrent (albeit with provincial paramountcy), it is conceivable that the rest-of-Canada might want to have *more uniform* policies in certain areas than is now the case. For example, social policy or health policy for the ROC could be run at the Community level, if this is what the ROC wants. This represents a degree of flexibility in terms of centralization/decentralization or "re-balancing" that the ROC currently does not have. Moreover, by the very nature of the proposal, these decisions do not have to be made immediately. The status quo for the ROC is a viable option while various Community members sort out their priorities.

A second area of flexibility relates to the "five nation" aspect of the Federal Council. The formal "sovereignty-association" or confederation is between

these five Community members. But Canada East need not incorporate itself into a political unit called Canada East. The four Atlantic provinces can maintain their separate provincial identities, and their British Parliamentary traditions for that matter. They will be required to cooperate in sending members to the Federal Council. Even here, uniformity is not required. For example, the members could run in Canada East elections. Or Newfoundland could elect its allocated share of members while New Brunswick could, if it wished, nominate its members. And so on.

My personal hunch is, as already noted, that if individual provinces want to acquire greater powers they will find this option more realistic if they reconstitute themselves into larger units. But nothing in the proposal requires this.

In principle, symmetry prevails. All Community members have the same potential powers. Thus, this is *not* a "special status" model. If, however, non-Quebec Community members choose not to utilize these powers, the Community *will* have the appearance of being asymmetric in terms of provincial or Community member powers. Yet, at any time a Community member can exercise the right to full powers. Thus, any *de facto* asymmetry can arise only because this is what Community members desire.

De Jure Symmetry, De Facto Asymmetry

It is worth elaborating upon the aspects of the potential for symmetry in principle yet asymmetry in fact. The first point to make in this context is that asymmetry has always been an integral part of Canada and that a good deal of this can be traced directly in the *Constitution Act, 1867* (see Milne, 1991). Phrased differently, the groundswell of support for equal powers for all provinces is of recent origin and reflects, among other things, the "symmetry" of the amending formula required for Meech (i.e., all provinces treated equally, and in this case all having a veto). The second point is far more important in terms of the thrust of this paper, namely that Canada has also had considerable experience of *de facto* asymmetry.

Consider the following examples. In the mid-1950s, Quebec opted for its own personal income tax (PIT). While other provinces were and are free to follow Quebec's lead (and on several occasions Ontario postured in this direction), none has yet done so although, as noted above, British Columbia appears to be coming close to such a decision. Influenced in part by events in British Columbia, the recent federal budget has promised to investigate the possibility of giving provinces greater flexibility under the *existing* shared PIT. Specifically, the proposal under consideration is to give the provinces freedom over provincial tax rates and tax brackets provided that they apply this rate-and-bracket structure to the federally determined definition of taxable income. This would replace the existing system whereby provinces are limited to applying a single tax rate (e.g., 53 percent for Ontario) to the federal tax payable. My

purpose is not to become involved in the intricacies of the shared PIT system. Rather it is to make the case that this resembles closely the essence of concurrency with provincial paramountcy that is the core of the Community of the Canadas model. Provinces can opt for a separate PIT. Yet Ottawa can also legislate or, in the case at hand, signal an intent to legislate, in order that the environment is less conducive for provinces to embark on their own PITs (or, to exercise paramountcy). A related example in terms of PIT has to do with Quebec's opting for a tax point transfer (of 16.5 percent tax points) rather than a cash transfer in the mid-1960s. This option was presumably open to all provinces. Yet no other province followed suit. A final example on the tax side has to do with corporate income taxation. Three provinces have their own corporate tax systems — Quebec, Ontario and Alberta.

The pension area is, in a sense, more relevant since concurrency with provincial paramountcy actually prevails here (under section 94A of the *Constitution Act, 1867*). The result was that Quebec mounted its QPP as a similar but separate program from the Canada Pension Plan. All other provinces had and still have the same option. None exercised this option. Moreover, *à propos* the earlier discussion of the voting rights of MPs, Quebec MPs do have a right to vote on Canada Pension Plan legislation.

Immigration is another relevant area. For years, the so-called Cullen-Couture agreement allowed Quebec to exercise its (constitutional) concurrent power in this area. More recently, this agreement has been "enshrined," or nearly so. Similar arrangements are available to all other provinces and some (e.g., British Columbia) have indicated that they are interested.

A final general example relates to aspects of the general social envelope. Quebec has taken over some responsibilities in the areas of manpower and employment, for example, that were offered to, but refused by, the other provinces. Several provinces have taken advantage of varying family allowances per child depending on the number of children in the family (see Milne, 1991).

All of these areas appear to fall under the general CPP (concurrency with provincial paramountcy) approach to powers. Yet except for one or two cases, only Quebec has exercised the right to access these powers. Thus, generalized decentralization was not the result. Indeed, the opposite was and is true. With Quebec on its own chosen path, the other nine provinces along with Ottawa were able to mount a much more harmonized approach to many of these areas, an approach that would *not* have been possible if Quebec had not opted out.

In terms of the core of this paper, the evidence from our recent past is that the concurrency-with-provincial-paramountcy aspect of the proposed model is of and by itself not likely to lead to generalized decentralization, particularly if Ottawa enacts framework legislation that allows some degree of provincial flexibility. All provinces could have followed Quebec's lead. Few did. This

implies that the recent asymmetry in our federation reflects a conscious decision by the non-Quebec provinces *not* to exercise their powers. One cannot forecast the future from the past. But it is my view that if provinces other than Quebec were to access any newly available powers, it would be because their needs and challenges differ from those of other parts of the country. In this context, a passage from one of Robert Sheppard's recent columns (1991) is quite instructive:

When the unshures and don't-knows are weeded out, 50 per cent of New Brunswick respondents [to a Baseline Market Research poll], 49 per cent of Nova Scotia respondents and 56 per cent of Newfoundland respondents favour the hard option of political union for all four Atlantic provinces, which is a taboo subject among the political set. Opposition to the notion was, not surprisingly, the most pronounced in PEI (only 36 per cent in favour of political union).

Were political union to come about, or even economic union replete with substantial rationalization of several policy areas, Canada East would likely seek greater powers under CPP.

Redistributional Implications of the Community of the Canadas

While not always recognized, the principal reason why the Canadian federation is as decentralized as it is relates to the equalization program and, more generally, to interprovincial redistribution. It would have been impossible (or at least highly problematical) for the have-not provinces to agree to the postwar transfer of personal- and corporate-income-tax points unless these tax-point transfers were equalized. On the other hand, there is no question that redistribution is currently undergoing hard times in Canada — whether from the requirements of the FTA, the dictates of globalization, or the pressure arising from the federal debt and deficit overhang. The most likely scenario (largely independent of the constitutional crisis) is a complete reworking of the entire federal-provincial fiscal interface. Within this context, one possible outcome is the disappearance of explicit federal funding for the Canada Assistance Plan and the Established Programs which would be replaced by a transfer of equalized income tax points. In this sense, equalization would become the omnibus federal-provincial transfer scheme.

This would be an intriguing development. What held us together, east-west, in our formative years was an economic strategy — tariffs, other aspects of the National Policy and the transcontinental railway, but little in the way of explicit redistribution (except via the economic strategy that effectively transferred income from south to north). A century later, global and North American economic forces have led to the abandonment of this strategy. The new east-west "railroad" is social policy infrastructure and the archetypal social policy is the equalization system which ensures that Canadians, wherever they reside, have access to reasonably comparable public services at reasonably comparable

tax rates. Intriguingly, in his 1952 article "The National Policy — Old and New," Vernon Fowke suggested as much — and well before Canada put in place its comprehensive social policy network.

What does this mean for the Community of the Canadas or vice versa? The first point to make is that the provinces' options under concurrency with provincial paramountcy should be "fiscally neutral," i.e., provinces should be in the same *net* positive fiscally whether or not they exercise paramountcy. The second is that Quebec, rather conveniently, is *not* a major recipient of *net* federal benefits. The Atlantic provinces as well as Saskatchewan and Manitoba are major net beneficiaries. What this implies is that the degree of redistribution should be independent of whether Quebec becomes more decentralized. Phrased differently, interprovincial redistribution would be largely determined by and within the ROC. My hunch, however, is that one of the reasons why the four Atlantic provinces (or at least the three Maritime provinces) are increasingly attracted to greater economic and political integration relates to the realization that these federal-provincial transfers are likely to grow more slowly in the future (under any regime) and that, therefore, this may require greater rationalization and coordination in their operations.

Thus, the Community of the Canadas is consistent with a wide variety of approaches in terms of redistribution. In particular, it is ideally suited to a shift from an economic to a social policy "railroad." Most likely, however, events on this front will be driven by factors other than the proposed redesign of the federation.

THE COMMUNITY OF THE CANADAS: PROCESS

Can we get there from here? The short and long answer is "not easily." It will take immense goodwill on all sides and substantial good luck. It may also require a full recognition of the consequences of failure, again on the part of all.

One thing is sure. All of this cannot be "constitutionalized" in a short period. This is the bad news. The good news is that it need not be. One of the lessons of the 1980s is that we attempted to "constitutionalize" far too many initiatives when other alternatives — ordinary legislation, tax-point transfers, reworking fiscal arrangements, bilateral agreements, uniform devolution of powers on Ottawa's part, etc. — could, and in the future, must, carry some of the freight, as it were.

Nonetheless, many aspects of the proposal require constitutional amendment. This would include, for example, the substitution of a Federal Council for the Senate. In terms of powers, it would be necessary to designate those specifically assigned to the Community level and to the Federal Council. Beyond this, it is "simply" a matter of assigning all other powers jointly with

provincial paramountcy. Members who wish to take advantage of provincial paramountcy would presumably sign bilateral arrangements under a provision similar to section 43 of the *Constitution Act, 1982*. This would go both ways. Should the rest-of-Canada desire that the Community government take over some existing provincial areas, they could use this same provision (or section 94) to pass authority upwards (accompanied by appropriate compensation). If a more formal division of powers is desired, this can be worked out over time; the above provisions should be sufficient in the interim.

I view all of the above as challenging but feasible. Perhaps the most daunting initiative is the assigning of culture and language to the Community members. This implies the end of pan-Canadian bilingualism and replaces it by a territorial variant, *à la* Switzerland. In other words, it probably requires an amendment to the Charter. (A more relaxed notwithstanding clause will *not* suffice here). The overall proposal could founder on this issue. But this is the very issue that is at the heart of the deliberations of Bélanger-Campeau (even though it is frequently couched in other terms). My only comment here is that there is no possibility of an integral Canada that does not allow Quebecers control over culture and language. As noted earlier, such a provision will not likely have much impact on the role of English in Quebec or French in New Brunswick and parts of Ontario. On the positive side, this proposal might well remove one of the most divisive symbols in both Quebec and non-Quebec Canada. Moreover, it would allow the rest-of-Canada, through a provision similar to section 94, to reconstitute the full charter, as it were, and even remove the notwithstanding clause.

CONCLUSION

Momentum is growing in Quebec for sovereignty. The "votes" appear to be there. The question not yet being addressed by Quebecers is whether or not there is an *preferable* alternative to sovereignty that would not only allow further evolution of their economy and society but would do so in a manner that ensures that unavoidable risks are kept to an easily manageable minimum. The question not yet addressed by English Canadians is the nature of their options in the event that Quebec opts for sovereignty. In my view, far too much time and effort has been devoted to the calamities that could befall Quebec should it go its own way, while almost no analysis recognizes that many of the same challenges will apply to the ROC.

The Community of the Canadas proposal is offered as one — not *the* — approach that not only overcomes the constraints imposed by the status quo but, more importantly, "wakes up" both sides to the potential gains that the other side can offer. For indeed both sides at base, face quite similar challenges, namely how all Canadians can ensure that their major achievements towards

insuring their respective distinctiveness as inhabitants of the upper part of North America are preserved and enhanced within an increasingly integrated North American and global environment.

The model advanced here is clearly in the federal mold, albeit with some confederal tinges. For community nations that take up all the options, it effectively confers "sovereignty" over language and culture and it allows Quebec, for example, to be *directly* represented on the Federal Council. Whether this model will evolve towards a "bi-national" relationship over time or towards a "multi-national" relationship (if, say, Canada West and Ontario also take up their full potential powers) is, at this point, unclear. In either case, the model approaches that of the European Community and may eventually embody full sovereignty-association. The key point from my perspective (as reflected in the earlier section on recent Quebec achievements) is that there is ample room for new opportunities and new challenges within the framework of the Community of the Canadas to fully engage Quebecers for some considerable time *without* the added (and in my view rather dramatic) risks and irreversibilities that would attend a declaration of independence.

To be sure, consideration let alone recognition of this (or some similarly radical) proposal will require a substantial shift in popular allegiances among Quebecers, now that they perceive that sovereignty is at hand. Moreover, it will take an equally dramatic realignment of allegiances on the part of many English Canadians who, on the whole, feel rather comfortable with the status quo. Yet, without such recognition that there is a creative and mutually beneficial set of options between these polar solutions, all Canadians will inevitably become caught up in a highly intriguing, but fully predictable, "end game."

NOTES

1. While what follows is faithful to the thrust of the paper submitted to Bélanger-Campeau, it has been updated in places to take account of more recent events and has been oriented more towards all of Canada, although the principal focus remains Quebec.
2. This section draws heavily from my Robarts' Lecture, *What does Ontario Want?* (1989).
3. This may well be viewed as a biased remark. For example, what was the nature of our early history that it took two "transformations" for Quebec to pull itself up to its current level?
4. It is, of course, also true that many Quebecers have welcomed the Charter *and* many English Canadians regret its imposition. Nonetheless, in terms of elites, the above generalities would appear to ring true.

5. In terms of the definition of the "distinct society," before the House/Senate Joint Committee on the 1987 Constitutional Accord *La Federation des femmes du Quebec* offered the following definition (adopted from the Beige Paper):

Our laws, our legal system, our municipal and provincial institutions, our volunteer organizations, our media, our arts, our literature, our education system, our network of social and health-care services, our religious institutions, our savings and loan institutions as well as our language and culture

Cited in the *Report of the Special Joint Committee*, 1987:41.
6. Section 94 of the *Constitution Act, 1867* reads:

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 of 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 LaSelva, 1983).
7. Sections III and IV are adopted from Courchene (1990a and 1990b).
8. As a result of the February 1991 federal budget, this EPF freeze has been extended through to fiscal 1995-96.
9. The impact of the 1991 federal budget is that cash transfers will fall to zero sooner. The reason why Quebec reaches zero cash transfers sooner is that Quebec has long received extra personal-income-tax points in lieu of cash transfers for aspects of EPF. Thus, its cash transfers fall to zero before cash transfers for other provinces. Indeed, after all cash transfers fall to zero, Quebec will *still* be in receipt of these tax points. Clearly, this will become an emerging issue in fiscal federalism.
10. Again, recent events have altered aspects of this. Saskatchewan has decided to follow Quebec's lead and "join" the GST. Second, in the 1991 federal budget, Finance Minister Michael Wilson indicated his willingness to consider greater income-tax flexibility for the non-Quebec provinces. Specifically, Ottawa will consider allowing the provinces to apply their own rates and bracket structures to (the federally determined) taxable income. This may well stall the B.C. initiative towards an independent personal income tax system.
11. The First Nations/Territories will have difficulty exercising paramountcy unless they have provincial status.

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