



# Canada: The State of the Federation 1990

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The Institute pursues these objectives through research conducted by its own staff and other scholars through its publication program, seminars and conferences.

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## PREFACE

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In April 1990, the Institute of Intergovernmental Relations lost a good friend and advisor, Donald Smiley. This volume is dedicated to him and we include the text of a moving tribute to Don which Alan Cairns delivered at the Memorial Service for him.

This is the fifth volume in the annual series of the Institute of Intergovernmental Relations, *Canada: The State of the Federation*. While we have attempted to maintain the scheduling of recent issues with publication in the late summer of each calendar year, the desirability of taking account of the demise of the Meech Lake Accord late in June has put particularly heavy pressure upon the authors, reviewers and editorial staff in aiming to keep delay in publication to a minimum.

This volume continues the previous pattern of including a section of chapters focusing on issues, a section of chapters focusing upon particular provinces, and a chronology of events covering the period July 1989 to June 1990. We have this year added, because of its special significance, a separate section of two chapters on the demise of the Meech Lake Accord and an appendix containing a bibliography of literature on that Accord.

The editors wish to express their gratitude for the cooperation and promptness of all the authors in this volume in meeting our deadlines and in complying quickly to revisions suggested by our independent readers. We also thank the referees for responding so rapidly to our requests.

The preparation of this volume has once again been the result of an excellent team effort at the Institute. We would like to thank Valerie Jarus who with the help of Patti Candido prepared the text, Darrel Reid for overseeing the desk top publishing arrangements, Daniel Bonin for preparing the "sommaries," Marilyn Banting and Margaret Day for proofreading and Mary Kennedy for assistance in distribution.

Ronald L. Watts  
Douglas M. Brown  
September 1990



## DONALD V. SMILEY (1921-1990)

*Donald Smiley, one of Canada's pre-eminent political scientists died on 28 April 1990, in Toronto. At the time of his death he was a Distinguished Research Professor Emeritus at York University in Toronto. He held faculty positions at Queen's University (1954-1955), the University of British Columbia (1959-1970), the University of Toronto (1970-1976) and York University (1976-1990). In 1974 he was elected a Fellow of the Royal Society of Canada. In 1988, political science colleagues from across Canada celebrated his lifetime of achievement at a conference in his honour, the papers of which were published as a book, *Federalism and Political Community: Essays in Honour of Donald Smiley* early in 1990. To the regret of his many friends, Don did not live to accept the honorary degree that was to be conferred by his Alma Mater, the University of Alberta, in June of 1990.*

*With Don's death, the Institute of Intergovernmental Relations has lost a good friend and advisor who had been associated with it since its inception 25 years ago. He was a member of its Advisory Council from its beginning and regularly participated in the Institute's colloquia and conferences. Not only did he give the Institute wise advice, but from time to time he contributed to its Discussion Paper series and other publications. Indeed, shortly before his death he had agreed to contribute to this volume a chapter on the outcome of the Meech Lake process. The Institute and I personally have lost a close and dear friend and we dedicate this volume to him.*

*We include below the text of a tribute which Alan Cairns paid to Don at the memorial service for him held on 7 May 1990.*

Ronald L. Watts  
Director  
Institute of Intergovernmental Relations  
Queen's University

A Tribute to Donald V. Smiley, delivered at the Memorial Service,  
Bloor Street United Church, Toronto, 7 May 1990

*It is a privilege and honour, and also emotionally very difficult, to say a few words in remembrance of Donald Victor Smiley who was a close and dear friend of mine for thirty years, half of my life.*

*He was not young when he died, but neither was he full of years. He still had projects underway, and honours to receive, including an honorary degree from the University of Alberta only a few weeks from now. We knew of his health problems, but we expected many more occasions of lively and even heated discussion; but that was not to be.*

*What manner of man was Don Smiley? He had a large and generous capacity for friendship. When we would meet, he would always inquire about my wife Pat, my three daughters and my mother. Then, unfailingly, he would bring me up-to-date on Gwyn and their family of six children. He ended one of his last letters to me with the phrase "take care," which he thought of as a typically Canadian parting phrase, the version between friends of Peace, Order, and Good Government. He contrasted this with the shallow optimism of "Have a good day," appropriate only to the citizens of a next-door country devoted to the "pursuit of happiness."*

*He disliked pomposity; he enjoyed disrobing emperors and exposing impostors. On the other hand, I suspect that he would not have wished to run them completely out of town, for that would have deprived him of the pleasure of unmasking their pretensions.*

*Characteristically, and in an old-fashioned way, he was a letter-writer. He wrote often, and he wrote by hand. There was a real "Mensch" behind his letters. They were not short and business-like, but long, reflective, and personal. They were always designed to keep the conversation going, never to end it. In my case, they often challenged something I had recently written or said. One such, unanswered, sits on my desk in Vancouver now.*

*These traits reveal how, for Don, friendship and collegiality were intertwined.*

*He was fortunate in his choice of a vocation. There are many ways of living a good life. In one aspect, they all involve, I think, finding a socially useful task that engages an individual's essential and authentic inner core of identity. For Don Smiley, the life of a scholar was certainly not just a job. At a minimum, it was a vocation, and it probably verged on being a calling, perhaps stimulated by the fact that he was the son of a clergyman.*

*As a scholar, he brought the same attitude to the study of Canada as he did to his concern for his friends — taking care. Throughout most of his scholarly life, Canada was a patient, alternating between a fragile robustness and a life-threatening illness. Canada, as the various editions of his major text*

declared, was constantly in question. His task was to diagnose the ailment and to seek a possible cure.

He viewed Canada as an inherited public good, of which he was one of the custodians — patching, mending, prescribing, and trying to get the patient to give up those bad habits that reduced life expectancy.

Don Smiley brought passionate commitment to his scholarship. He and it exemplified E.M. Forster's injunction "only connect." The lens through which we now view Canadian federalism and the constitution are, in significant part, Smiley's lens. And that is no trivial matter. To have made a major and positive impact on the understanding of the crucial governing arrangements of an historic people is not a small achievement.

Don Smiley liked his study, but he also liked to leave it. To Don, scholarship was talk as well as the written word. I can see him now, ambling down the corridor, coffee cup in one hand and pipe in the other, looking somewhat dishevelled, and approaching whoever was available to be buttonholed and to be asked — Reg, or Leo, or Paul, or Ed, or Alan — "What do you think of this idea I've been playing around with?" Being a colleague, for Don, was more than a thin, technical relationship, a product of accidental proximity in the same building, or of a nominal allegiance to "Political Science." To him, the community of scholars was real because he made it so.

And now he is gone, and we remain. It is proper that we should weep and mourn and be sad, for a good life has ended, a dear friend has left us, a father and husband and brother has departed.

His life had the ups and downs of friendship and loneliness, of achievement and insecurity, of contact with the sacred and of humility before the puzzle of what life and the cosmos were all about. As he said in one of his last public statements, "I do not know well what politics means, if it means anything at all—[or] where the universe ends or begins."

This ignorance, however, was not a recipe for indolence, or for moral or intellectual paralysis. He received sustenance from deeply-held Christian beliefs. These were supplemented by the solace, meaning, and purpose he derived from his family, to which he was deeply devoted, from his friends, his good works and his vocation.

Our proper sadness at his passing should be coupled with a sense of celebration for his life. So, I salute Donald Victor Smiley for providing us with a model of how to live a good and worthwhile life. I salute him for nurturing those truly humane and civilized values that help us all to ward off the darkness and evil of the world.

I salute him, also, because I know that if he is listening he is preparing, as he always has in the past, a rebuttal of at least some of what I have said.

To Don — thank you and farewell.

Alan Cairns



## CONTRIBUTORS

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*Ronald L. Watts*, Director of the Institute of Intergovernmental Relations has written numerous books and articles on comparative federalism, of which the most recent is *Executive Federalism: A Comparative Analysis*.



# I

## Introduction

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## An Overview

Ronald L. Watts

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*Après un survol des divers chapitres de ce volume, la présente introduction fait l'analyse des répercussions les plus significatives de l'échec de l'Accord du lac Meech. La non-ratification de l'Accord en juin 1990 aura constitué un événement crucial dans l'histoire de la fédération canadienne. Si la structure fédérale canadienne instaurée en 1867 a fait montre, en 123 ans d'existence, d'une remarquable adaptabilité, en revanche, les antagonismes fondamentaux qui ont été révélés durant l'épisode Meech appellent des modifications substantielles à l'actuelle structure fédérale. Etant donné le caractère déterminant des mécanismes par lesquels ces changements d'ordre institutionnel seront négociés, les douze prochains mois au cours desquels ce processus se mettra en branle pourraient bien décider du sort futur de la fédération canadienne.*

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### INTRODUCTION

The failure in June 1990 of the effort to ratify the Meech Lake Accord marks a critical turning point in the evolution of the Canadian Federation. The public weariness with constitutional issues and the relatively tranquil scene in the immediately following months may suggest to some that the current constitutional arrangements will be able to continue with only minor incremental adjustments. The reality under that apparent tranquility, however, points to the next two or three years being a period of increased political tension and uncertainty with the continued existence of Canada as a federation possibly coming into question and constitutional issues once again dominating the political agenda. The debate over the Accord and its demise has introduced new political dynamics. These are marked by: a growing French-English polarization over the status of Quebec; Quebec initiating a process for bringing forward in the spring of 1991 more radical demands for autonomy or even independence; western Canada accelerating its challenge to the dominance of central Canada; and a weakening in the ability of national political parties to aggregate and integrate regional interests and a consequent reduction in the capacity of the federal government to provide leadership in uniting the country. Indeed, Canada is about to embark on a discussion about its constitutional future more critical than any in its past.

Given the momentous significance of the failure of the Meech Lake Accord, it is hardly surprising that that event dominates the contributions to this volume. As in previous annual volumes chapters were commissioned on a variety of issues and about developments in some specific provinces, but each of the authors of the chapters in this volume has found it necessary to include extensive references to the relevance of the debate and eventual fate of the Accord. The chronology of significant events for July 1989 to June 1990 included in this volume, following practice in previous editions, illustrates vividly how throughout the past year the issue of the Accord dominated political events in Canada.

### THE DEMISE OF THE MEECH LAKE ACCORD

Two contributions to this volume deal specifically with the failure of the Meech Lake Accord. Richard Simeon and Pierre Fournier each analyse that failure, the reasons for it and the implications. The former presents an analysis by a Canadian from outside Quebec and the latter provides a view from within Quebec. The two authors come to broadly similar conclusions. They examine the significance of a number of factors: the flaws in the process growing out of the constitutional amendment procedures adopted in 1982; the inadequacy of public involvement prior to the formulation of the Accord in 1987; the dominance of executive federalism; the quality of political leadership including the strategic errors of Prime Minister Mulroney and the public opposition to the Accord of Pierre Trudeau and Jean Chrétien; the vigorous opposition of the "Charter" interest groups such as women, the provincial linguistic minorities and the aboriginals; and political manoeuvring within the reluctant provinces.

In the end both authors see the failure arising, however, from a more fundamental polarization within Canadian society. They point to changes in society both outside and inside Quebec leading to a widening divergence.

Under the impact of the Charter and of immigration producing an increasingly multicultural society, many Canadians outside Quebec have come to put the primary emphasis upon individual rights and the concerns of trans-provincial minorities rather than on Canada's historical duality. The debate over Canada-U.S. free trade, which outside Quebec aroused many fears about the loss of Canadian identity, sharpened the determination of many Canadians outside Quebec to insist on a central government strong enough to stand up to American challenges and capable of redistributing wealth and providing national social and welfare programs throughout Canada. This was coupled with resentment, occasionally expressed overtly but pervasive under the surface, at Quebec's apparent disproportionate influence in Ottawa, as illustrated by the controversy over the awarding of the maintenance contract for CF-18 aircraft which served as a vivid symbol, and by the adoption of the Free Trade

Agreement so much more strongly supported in Quebec than elsewhere. These factors and the denial of bilingualism and of the Canadian Charter of Rights and Freedoms represented by Quebec's Bill 178 contributed to a lack of sympathy for Quebec's aspirations that contrasted with attitudes expressed outside Quebec during the late 1970s and early 1980s. The result was an unwillingness on the part of many Canadians outside Quebec to endorse the Accord despite the fact that it would in effect have done little more than constitutionalize the status quo.

Meanwhile, Quebec too has changed significantly during the past decade. Confidence on the economic front has grown enormously with the rising vigour of its much commented upon business class. At the same time, however, linguistic insecurity has also been heightened as Quebec's proportion of the Canadian population has declined, as immigration has changed the cultural face of Montreal, and as Supreme Court judgements have struck down sections of Bill 101, Quebec's own Language Charter. Since Quebec's National Assembly refused to endorse the 1982 constitutional revision, Quebec has been waiting for the opportunity to have the fact of its linguistic and cultural distinctiveness recognized within the Constitution. The Meech Lake Accord was, therefore, of enormous symbolic importance to Quebec. Its non-ratification has aroused a strong emotional feeling among a large majority within Quebec that they have been rejected and even insulted by the rest of Canada. Pierre Fournier's contribution conveys clearly the sense of anxiety, frustration and hurt that has been engendered within Quebec.

While those who opposed the Meech Lake Accord often did so on the grounds that they were resisting the weakening of the central government and checking centrifugal forces within Canada, the result ironically has been to sharpen the divide between Quebec and the rest of Canada. A consequence, as Richard Simeon notes in his chapter, is that there is now "virtual unanimity among the Quebec political class that Quebec must unilaterally develop and assert its own role." To that end Quebec has established a Commission to explore the alternatives. While there is as yet no consensus on the precise changes that will be sought, the alternatives under discussion all point towards arrangements involving much more autonomy for Quebec than was contemplated in the Accord. For its part, the rest of Canada has displayed growing opposition to recognizing Quebec as a "distinct society" (interpreted as giving Quebec a "special status"), a feeling that Quebec has more than its fair share of influence in Ottawa, and increasing acceptance of the idea that Quebec will eventually separate. Some of this opposition comes from English Canadian centralists who see any devolution to Quebec as undermining central jurisdiction, and some comes from English Canadian decentralists who insist that any devolution to Quebec must be no more than that applied equally to all provinces. This hardening of attitudes on both sides of the divide between Quebec and the rest

of Canada will make a resolution of the impending constitutional crisis even more difficult than during the Meech Lake debate of the past three years.

An important development has been the erosion of uniting beliefs within Canada. Traditionally Canadians have emphasized the importance of compromise and the recognition of diversity as essential elements in continued federal unity. The past decade, however, has seen the emphasis instead on issues of rights and equality. Not only has the Charter emphasized the predominance of individual rights at the expense of collective ones (although it does contain collective rights), but at the provincial level there has been an emphasis upon equality among the provinces at the expense of asymmetry (of which there were elements in the original 1867 constitution). For its part Quebec has been preoccupied with asserting its own rights and equality in relation to the rest of Canada. Thus, of the traditional eighteenth century political ideals of Liberalism, Equality and Fraternity, the recent preoccupation with the first two has led to a dangerous neglect of the compromises necessary for achieving the third.

#### FOCUS ON ISSUES

One of the features of the debate over the Meech Lake Accord has been the rise to prominence within Canada, following the adoption of the Charter of Rights and Freedoms in 1982, of what Alan Cairns has labelled in his chapter in this volume, "constitutional minoritarianism." Challenging governments and the territorial pluralism of federalism has been a host of new groups pressing their cases in the Canadian constitutional debate: women, aboriginals, visible minorities, official minorities, the disabled and others. No longer is constitutional debate devoted solely to issues of federalism and parliamentary government. It now extends to issues relating to the constitutionally embodied rights of individuals and of a variety of minority groups. In the impending renewal of constitutional debate in Canada provoked by the sharpened polarization between Quebec and the rest of Canada, the growing influence of "constitutional minoritarianism" will make more complex the processes of constitutional debate and the prospects for resolution.

The Meech Lake debate has also made clear the degree to which the rapidity of information dissemination and the role of the electronic media in contemporary society now make elite accommodation and brokerage politics as a means of achieving political accommodation much more difficult. Consequently, the state of public opinion and attitudes has a much greater significance. The chapter by Michael Adams and Mary Jane Lennon, based on survey data gathered by the Environics Research Group, suggests an increasingly centrifugal character in attitudes right across Canada. These are expressed in terms of increased regional identification, decline in the importance Canadians attach to various symbols of Canadian identity, general preference for reduction in

areas of federal government jurisdiction, and widespread dissatisfaction of citizens in most provinces with their share of the national pie. How much these attitudes derive from hostility to the current office-holders in the federal government and how much from changes in fundamental attitudes to the federal constitutional regime is difficult to determine. Some counter-evidence was the extensive opposition to the Meech Lake Accord expressed on grounds that the Accord would have weakened the central government. Nonetheless, as Canada renews the debate on its constitutional future, the changing public attitudes reported by Michael Adams and Mary Jane Lennon will have an important impact.

In the normal course of events the current federal-provincial fiscal arrangements would have been due for reconsideration over the next year or so. With the wider constitutional issues returning to the fore at the same time, adjustments to intergovernmental fiscal arrangements will inevitably be intertwined with the broader issues. Richard Bird analyses the agenda for the revision of intergovernmental fiscal arrangements. He sees these not so much in terms of specific issues, but rather in terms of the general characteristics of the current Canadian system of taxing powers and transfers, and the way in which these may be affected by changes to the overall federal institutional structure. A strong element of comparative analysis suffuses his contribution, and adds a welcome perspective suggesting the possible areas of change for future fiscal arrangements.

## FOCUS ON PROVINCES

Three provinces were selected for specific attention in this year's volume. The chapter by Daniel Bonin on Quebec and immigration policy illustrates in a key policy field the urgency that the Quebec government and Quebec society in general places on the demographic issue. The immigration policy questions which the rest of Canada faces, such as country of origin, economic status, role of refugees, settlement in Canada, overall numbers, etc. are in Quebec dominated by the issue of preserving French language and culture. The key problem is that immigrants to Quebec still have a propensity to be attracted and assimilated to the English language and culture. Despite some twenty years of special efforts in Quebec, the demographic threat from immigration continues to pose itself. Thus, the immigration issue is a good example of the sort of policy area where unique Quebec needs are driving that political community to seek "distinct" and independent political solutions. This explains why the Meech Lake Accord itself contained special provisions for this field, and why following its failure Quebec has proceeded to negotiate directly with Ottawa for adjustments to the already existing intergovernmental arrangements relating to immigration.

Saskatchewan is a province undergoing transformation. Howard Leeson describes the transition being forced upon that province in terms of two major factors: the decline of the agricultural industry, and the efforts of the Conservative government since 1982 to apply a neo-conservative program in a province which during most of the postwar period had played a unique role in the life of Canada as the "cradle of socialism." He argues that the economic and political changes which are occurring are likely to be permanent, altering the role of Saskatchewan within the federation, and with it the role of the province in intergovernmental relations. He foresees a more alienated approach to federalism in Saskatchewan and a less socially progressive stance on national social issues.

During the Meech Lake debate, Newfoundland played a decisive role. It was the only province whose legislature at one point ratified the Accord (on 8 July 1988), but subsequently rescinded its approval (on 6 April 1990). Finally, at the deadline on 23 June 1990 a motion in the House of Assembly to ratify the Accord was allowed to die without coming to a vote. The original ratification took place under the Peckford Conservative government and the rejection occurred under the Wells Liberal government. This turn-about reflected a more fundamental "sea-change" in the political conditions in Newfoundland which the chapter by Douglas Brown analyses. The aggressive provincialist position of the Peckford government during most of the 1980s was based on an optimism that resource development in fisheries, offshore oil and hydroelectricity would reduce the chronic disparities between Newfoundland and the rest of Canada and Newfoundland's dependence upon Ottawa. But the failure of these raised expectations led to the rise to power of Clyde Wells in 1989, a premier committed to a strong central government capable of assisting Newfoundland in reducing regional disparity. Consequently, he opposed the Accord on the grounds that it would weaken Ottawa's powers. Brown suggests that the result of Wells' action may have been not only to create in the short-term a difficult climate for intergovernmental relations between Newfoundland and the other governments within Canada, but to lead, ironically, in the longer term to an even more dramatic decentralization of the Canadian federation in the future.

## THE FUTURE PROSPECTS

The Canadian federal structure devised in 1867 has over the century and a quarter of its existence proved remarkably flexible and resilient through many changing conditions. Nevertheless, the fundamental changes in Canadian society which led to the failure to resolve the differences over the Meech Lake Accord indicate that, without some radical changes, the existing federal structure may prove to be tenable for more than an interim period of a few years. At the very least it is no longer acceptable to a majority in Quebec and in addition



is the source of much dissatisfaction in western Canada and also in the Atlantic provinces. Furthermore, events during the summer of 1990 have made Canadians realize that the issues of aboriginal rights and self-government require urgent attention.

So soon after the failure of the Meech Lake process it is too early to identify with certainty what changes may be necessary to hold Canada together. Among the federal options that may have to be considered, if Quebec is to remain a component, are: (1) a more decentralized federation, (2) a federation with radically more asymmetry than was envisaged by the Accord, reconciling the desires of Quebec for substantial autonomy with the desires of those outside Quebec for strong central jurisdiction in the rest of the country, or (3) a bipolar federation consisting of two units, Quebec and English Canada, the latter taking either a unitary form or more likely existing as a federation within a federation. Proposals for any of these three options are likely to face strong opposition outside Quebec. What needs to be emphasized, however, is that the federal form of government elsewhere in the world has taken a great variety of forms. We should not be afraid, therefore, to seek pragmatic adjustments. For instance, the Canadian federation might be made more effective if the powers of the central government were increased in some areas and decreased in others. Federal jurisdiction might be enhanced to ensure the free movement of people, goods and services (the European Community is often cited both in Quebec and elsewhere as a superior example in this respect). At the same time jurisdiction over some major areas now assigned to Ottawa might be devolved to provinces. This might apply to areas which, as examples of other federations indicate, do not need to be centralized for an effective federation. This might go a significant distance to meeting Quebec's concerns and those of some of the other provinces. Modifications may also be necessary to improve the representativeness and effectiveness of our central institutions.

Canada is not alone in facing contradictory trends both for integration and disintegration. Dual pressures for larger political units capable of fostering economic unity and enhancing security, on the one hand, and for smaller political units more sensitive to their electorates and capable of expressing regional and local distinctiveness, on the other hand, have led to concurrent movements for integration and devolution throughout the contemporary world. The result has been a variety of new federal forms, many varying considerably from the older traditional federal models. These have each attempted to reconcile the need for large-scale political organization with the recognition and protection of ethnic, linguistic or historically derived diversity. In dealing with our own contemporary Canadian problems we may benefit from an understanding of these dual pressures elsewhere and of the variety of federal forms that have been developed in response.

In the event that agreement on major revisions within the framework of a federal solution could not be agreed upon, the alternatives would appear to be a loose confederation of four or five regions or a bipolar confederalism of two units consisting of Quebec and a Canadian federation. Failing these, the likely outcome is Quebec's complete economic and political separation. It would be ironic, if at the very time when Europe is evolving from confederalism to its own unique form of federalism accommodating the national diversities of that continent, Canada should go in the opposite direction.

Before these issues of future institutional structures are resolved, however, prior consideration will have to be given to the process by which constitutional changes are to be negotiated, since the process adopted may virtually determine the outcome. Given concerns expressed about the dominance of executive federalism, the lack of public participation in the process by which the Meech Lake Accord was initially negotiated, and the "unworkability" of the constitutional amendment procedures adopted in 1982, consideration will have to be given to such issues as forum, consultation, public discussion, consensus-building, legal procedure and timing.

A basic choice to be made about future constitutional revision is whether specific issues that cry out for change should be addressed incrementally one by one, or an attempt at an omnibus reordering of constitutional arrangements should be made, as Quebec is likely to insist? The former provides a better chance of retaining Canada's corporate entity and less risk of losing the whole relationship in zero-sum confrontations. Furthermore, Swiss experience during the past 25 years suggests that by comparison with piecemeal resolutions of constitutional issues, efforts at total constitutional revision are extremely difficult to bring to fruition. Nevertheless, the debate over the Meech Lake Accord showed how difficult it is to isolate specific constitutional issues such as the "Quebec round" from other concerns to deal with them in a sequential way. Comprehensive bargaining, despite the enormous risks, might enable creative trade-offs between issues rather than simply producing a defence of the status quo: it might prove possible, for example, to obtain more effective arrangements for strengthening the economic union and central institutions in return for devolution to Quebec of powers over matters of most concern to it such as immigration, training and language policy.

A particular problem arises from the declaration of Quebec spokespersons after the demise of the Meech Lake Accord that future negotiations should be bilateral between Quebec and Ottawa rather than through multilateral First Ministers' Conferences as in the past. But this raises questions of "Who is to speak for English Canada?" "English Canada" has no corporate existence or institutional structure as such, and therefore has difficulty in responding. Can the federal government speak for "English Canada" when it is composed of members from both Quebec and the rest of Canada? Can national party leaders

like Brian Mulroney and Jean Chrétien, both of whom come from Quebec? Can individual premiers in the other nine provinces given the differences among them? Will a special institutional framework need to be established? Is it feasible for the federal government to carry on simultaneous parallel negotiations with Quebec and with the other nine provinces collectively, an extremely cumbersome arrangement?

Unless the formal constitutional amendment procedures are modified first, any constitutional revision will have to meet the legal requirements of the *Constitution Act, 1982*, ss. 38-48. This leaves only limited room for major constitutional revisions through bilateral negotiations between Ottawa and Quebec under s.43. Most major constitutional amendments inevitably affect other provinces and will require their assent through the "7+50" rule or unanimity. It will be difficult, therefore, to avoid a role for the premiers and legislatures of the other provinces if comprehensive rather than more limited revisions are sought. As the Meech Lake process has already shown, comprehensive change and the accommodation of Quebec's insistence upon more "sovereignty" would have little chance under these requirements. This may encourage Quebec to declare its independence unilaterally as the first step before negotiating a new arrangement. That in turn is likely to produce a strong emotional negative reaction in the rest of Canada. If in such an atmosphere agreement upon a new structure could not be reached, no ongoing federation or association between Quebec and the rest of Canada would remain. That pattern of disintegration has occurred in several federations, even where the seceding unit initially expressed strong desires for a continued association.

Given the difficulties arising from the formal constitutional amendment procedures established in 1982 and criticisms of its "unworkability" and lack of provision for public participation, one possibility is to follow a two-stage process. The first would deal with changing the way the Constitution is amended, and then the second would deal with the actual changes to be made to the federal structure. There is logic to such a staging, but past Canadian experience tells us how difficult it is to get agreement upon procedures for formal amendments to the Constitution.

A factor which will affect the process of constitutional revision is the weakened capacity of the national parties to forge some kind of national working consensus. The rise of the Reform Party in the West and the Bloc Québécois illustrates the declining ability of the national parties to aggregate interests across the regions. These developments will affect the ability of Parliament to serve as a major forum for resolving constitutional issues. Further weakening the capacity of the Federal government to provide leadership in uniting the country is the current situation where its fiscal and deficit problems limit its ability to use financial inducements in support of cohesion, and the widespread unpopularity of the Mulroney government according to oft-quoted opinion surveys.

Concerns about adequate public discussion prior to intergovernmental negotiation has led to proposals, not only in Quebec but in several other provinces, for the establishment of commissions to consider constitutional issues. A question that needs to be considered is whether the establishment of provincial, federal, federal-provincial, or non-governmental commissions would help or hinder the reaching of a resolution.

Given the discrediting of "executive federalism" as a process for facilitating constitutional revision, following its failure in the Meech Lake saga, a radical alternative process might be the establishment of a Constitutional Convention. The Philadelphia Convention of 1787 which produced the Constitution of the United States or constituent assemblies established for the creation of federations elsewhere might serve as precedents. For example, a convention composed of delegates selected by the Provincial Legislatures and Parliament might be given responsibility for drafting a new constitution. The recommendations of the convention would then be sent to all the legislatures to be ratified under the requirements of the existing constitutional amendment process. Another variant would be to agree unanimously in advance that the recommendations of the convention would be put to a national referendum requiring special regional majorities for ratification. Issues of convention composition and voting procedure would in any case have to be decided in advance and would themselves almost certainly be contentious. Given the sharpening differences within Canada there may be real doubts also as to whether a constitutional convention in Canada could reproduce "the miracle at Philadelphia" which occurred in 1787.

The issues and problems enumerated above indicate that the challenge facing Canadians in the next few years will be a daunting one and is likely to test to the limits their patience and tolerance. The continuity of Canada as a federation will clearly be under threat in a way that it never has been before. Nevertheless, this situation may also provide Canada with an opportunity to negotiate a revised federal structure that will deal more satisfactorily with the changing concerns of Canadians across the country and equip us to deal more effectively with challenges in the future.

Canada's ability in the post-Meech Lake era to resolve the increasing polarization between Quebec and the rest of Canada, to accommodate the sharpening concerns of the western and Atlantic provinces and the rising Ontario sense of its own particular interests, and the insistence of the aboriginal peoples upon their rights and self-government will very much depend upon the particular form of negotiating processes that are established. The coming 12 months in which those processes for future constitutional revision will be set in motion may well be decisive, therefore, in settling the future fate of the Canadian federation.



## II

# The Demise of the Meech Lake Accord

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## Why Did the Meech Lake Accord Fail?\*

*Richard Simeon*

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*Ce chapitre propose un certain nombre d'explications de l'échec de l'Accord du lac Meech dont on pourrait tirer quelques enseignements dans la perspective d'une éventuelle reprise des pourparlers constitutionnels. De façon générale, le large consensus qui, à l'origine, donna naissance à l'Accord du lac Meech se sera effiloché au cours du long processus de ratification.*

*L'auteur dresse un bilan de l'entreprise tortueuse visant à sauver l'Accord et identifie les causes immédiates de cet échec. Au nombre de celles-ci, on relève l'inadéquation du leadership, l'insuccès des méthodes employées pour promouvoir l'Accord ainsi que le laborieux processus d'amendement impliquant la règle de l'unanimité, le délai fixé de trois ans et l'exigence d'une ratification par les différentes législatures au pays.*

*L'opinion publique anglo-canadienne, mécontente du "fédéralisme en circuit fermé" privilégié par les premiers ministres du Canada, aura, pour une bonne part, boudé l'Accord dans les derniers milles, en particulier devant l'insistance d'une majorité d'entre eux de voir l'entente ratifiée sans en changer un iota.*

*Plus fondamentalement, l'opposition à l'Accord a mis en relief les profondes divisions existant au Canada en matière de valeurs constitutionnelles, lesquelles peuvent être affectées à leur tour par l'exacerbation des tensions linguistiques et régionales. Le Canada anglais s'est en grande partie inscrit en faux contre l'idée-force à la base de l'Accord voulant que la notion de société distincte, telle que promue par le Québec, eut dû être enchassée sur le plan constitutionnel. Ironiquement, l'on sait maintenant que le Québec répliquera à cette rebuffade en affirmant de manière on ne peut plus radicale son caractère distinct.*

*Au reste, l'échec de Meech aura contribué à accroître la faiblesse du gouvernement fédéral et fragilisé, hors Québec, les chances d'un consensus quant à un type souhaitable de réforme constitutionnelle de même qu'au regard des mécanismes nécessaires à sa réalisation.*

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\*The author would like to thank Dwight Herperger for his invaluable research assistance on this paper.

## INTRODUCTION

When the exhausted first ministers met the television cameras after their all-night marathon to complete the final drafting of the Meech Lake Accord in June 1987, the mood was euphoric. Finally, a means to integrate Quebec fully into the Canadian constitutional order had been found. The euphoria continued in subsequent days. Seldom had a fundamental decision earned such universal acclaim from virtually the entire Canadian political establishment. Not only did it have the support of the federal government and all ten provincial governments, but it was also endorsed by both opposition parties in the federal parliament, and by the opposition in most of the provincial legislatures. Legislative ratification, under the terms of the amending procedures of the *Constitution Act, 1982*, seemed to be little more than a formality.

Three years later, on 23 June 1990, the Meech Lake Accord was officially dead. The *coup de grâce* had been delivered in two provincial legislatures, Manitoba and Newfoundland. Long before that moment, however, the legitimacy and desirability of the Accord, at least in English Canada, had been dissipated. Now, both the Liberals and New Democrats in Parliament, a number of provincial opposition parties, and a host of other interests from across the political spectrum had come to call for major changes to it. Indeed, what had begun in the minds of many as a notable act of national reconciliation and nation-building had become a symbol of national division along regional, linguistic and cultural lines and of the inability of the Canadian political process to forge a new set of accommodations. In the wake of the failure of the Accord Canadians crossed a major line: now, the debate would move onto a new plane, no longer focused on incremental reform of the federal system, but rather on the possibility of fundamental transformation, including a movement towards sovereignty for Quebec and new political arrangements for the rest of the country.

How did such an initial consensus fall apart so dramatically? What forces undermined it? This chapter attempts a first, tentative set of answers to these questions. It asks what lessons can be extracted from the failure of the Meech Lake exercise, and how they might be applied to our thinking about the next stages of constitutional development in Canada. I will argue that the demise of the Meech Lake Accord reflects profound and probably irreversible changes in the politics of Canadian constitution-making, changes which render both the process followed with Meech Lake, and the substance of much of its content, deeply incongruent with the emerging Canadian society and its values.

The most obvious initial retort to this observation is that Meech Lake almost did get passed: eight legislatures and the federal Parliament had ratified it in little over a year; and, it could be argued, only the extraordinary ability of one lone aboriginal member of the Manitoba legislature, and a last-minute refusal of Newfoundland Premier Clyde Wells to hold a vote, stopped it from passing.

It is certainly possible to imagine that if only a few things had been different — if, for example Premier Wells had been persuaded to take the final step of actually supporting the Accord and the companion agreement at the final meeting — then the Accord would have been passed. And if it had, it is likely that much of the most vocal opposition would have faded; and there would have been claims that whatever its failings, at least executive federalism “worked.” However, it is also the case that both Mr. Wells and Elijah Harper spoke for large numbers, probably a majority, of voters, at least outside Quebec; and that even if it had been passed, the anger and acrimony surrounding its passage would have done much to undermine the Accord’s capacity for reconciliation which had been its primary *raison d’être*. Even before the end, it had become clear that new issues and concerns would be put forward by Quebec, while in the West the rapid growth of the Reform party was but one reflection of the deep tensions tapped by the Meech debate.

#### THE ORIGINS OF MEECH LAKE

The path that led to Meech Lake has many starting points, going back at least to the Quiet Revolution of the early 1960s and to the commitment of every Quebec government elected since then to enlarge the sphere of autonomy, symbolic and actual, for Quebec. The proximate origins of the Accord, however, lie in the Quebec Referendum of 1980 and in the subsequent constitutional settlement, formally signed into law as the *Constitution Act, 1982*.

These events set the stage for Meech Lake in a number of ways. Most important, they left unresolved the status of Quebec in Confederation. The federalist forces in the Referendum campaign argued that a “NO” to sovereignty-association was not a vote for the status-quo; rather it was a vote for a “renewed federalism.” What form this would take was never clear: the vision of federalism espoused by Prime Minister Trudeau differed greatly from that set out in the “Beige Paper” of the Quebec Liberal Party.<sup>1</sup>

During the next two years events moved rapidly: a failed effort to find federal-provincial agreement on constitutional change; the federal government’s effort to patriate the constitution without general provincial support; and, pressed by the Supreme Court, a renewed intergovernmental effort, which culminated in the *Constitution Act, 1982*.<sup>2</sup>

The *Constitution Act* patriated the Canadian Constitution. It also adopted an amending formula, and made one change in the division of powers, clarifying and strengthening provincial jurisdiction over resources. Most important, it enacted the Canadian Charter of Rights and Freedoms. Conspicuously missing, however, was a response to the Quebec agenda, which had always stressed the need for greater provincial autonomy. Indeed it could be argued that after 1982, Quebec had less rather than more authority: it had gained no new powers, had



lost the veto over future constitutional change which most political actors assumed it always had and was now to be subject to a Charter which, in the public mind at least, was intrinsically hostile to collective rights and which opened the possibility of broad legal challenges to Quebec's attempts to shape its linguistic makeup through its language laws. Most telling, the *Act* had been passed over the objections not only of the Parti Québécois government, but also of Quebec federalists. The Supreme Court subsequently rejected Quebec's claim that the constitutional convention of "substantial provincial consent" should be read to include Quebec.<sup>3</sup>

This was the constitutional gap that Meech Lake was designed to close. It was untenable in the long run that the Constitution should lack the voluntary consent of the second largest province, and the only one with a French-speaking majority. Its legitimacy would always be in question. Popular reaction against the settlement in Quebec was muted, but there was always the possibility that this "imposition" of a constitutional order on Quebec would later prove to be a potent weapon in the hands of a resurgent nationalist movement. In the short run, Quebec announced that it would not be a full partner in any further constitutional development; and the government announced a blanket application of the Section 33 "notwithstanding" clause of the Constitution, exempting all Quebec legislation from important provisions of the Charter. Thus, the question arose: How to secure Quebec's endorsement of the Canadian Constitution? And how to do so consistent with other constitutional values and in the altered context of constitutional policy-making which had emerged from the 1980-82 round?

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But if the omission of Quebec's concerns in 1982 set the task for Meech Lake, other characteristics of the settlement and the way it was achieved were to make the task much more complicated.

The agreement also enacted the Canadian Charter of Rights and Freedoms, a third "pillar" to the Canadian constitutional structure of federalism and parliamentary government. Previous constitutional amendments had dealt almost exclusively with federalism and the division of powers. Now the Constitution was as much about the relations between citizens and governments as it was about the relations among governments. The values of federalism and parliamentary majority rule were now to be balanced against the rights of citizens embodied in the Charter; and the courts were to assume a vastly more important role as the arbiter of this complex set of relationships.

The values embedded in the Charter — individual rights, and recognition of the collective rights of language groups, of gender equality, of multicultural groups, and of Canada's aboriginal peoples — greatly expanded the range of constitutional issues and the range of groups prepared to mobilize around them.

More and more, citizens came to see their values and interests, as interpreted through the Charter, at stake.

This was especially true of the women's movement, which had fought hard for the inclusion of strong guarantees of gender equality in the new Charter, only to see them watered down in the closed-door negotiations at the November 1981 First Ministers' Conference. There followed a successful nation-wide protest to restore them. This episode had important consequences for the Meech Lake round, for it sensitized women's groups to constitutional issues and fostered a visceral suspicion of constitution-making in private meetings of first ministers.

The amending formula enacted in 1982 was also to guide the 1987 process. The fundamental principle underlying it was equality for all provinces rather than any special provision for Quebec. The procedures, defined in Sections 38-44, provided that most amendments could be passed by Ottawa with seven provinces representing 50 percent of the population; but unanimity would be required for a number of matters. Moreover, for the first time in Canadian history, the procedure required that amendments be ratified not by executives alone, but by legislatures. This small advance for democratic approval of constitutional changes was to prove critical.

The trigger for a new round of constitutional reform was the election of a Progressive Conservative government in 1984, with the largest majority in Canadian history. One of Prime Minister Mulroney's central goals was "national reconciliation," a desire to end the poisonous relationships among regions and governments that had characterized much of the 1970s, and especially the last term of the Trudeau government.<sup>4</sup> At the heart of national reconciliation was Mulroney's commitment to come to an accommodation with Quebec. In a campaign speech at Sept-Îles, Quebec, Mulroney indicated that the "first task" of his government would be "to breathe a new spirit into federalism"; and he promised to work with the "duly elected" government of Quebec to "convince the Quebec National Assembly to give its consent to the new Canadian constitution."<sup>5</sup>

Mulroney's approach to federalism and Quebec differed in important ways from that of Pierre Trudeau.<sup>6</sup> He was much more open to a province-centred view of the federation. He was anxious to solidify the massive Conservative breakthrough in Quebec, which drew heavily on nationalist elements. In addition he embraced "executive federalism," stressing the need for federal-provincial cooperation in policy formation and the role of first ministers in achieving the accommodations necessary for national unity. All this contrasted strongly with Trudeau's concern for national citizenship, his hostility to Quebec nationalism, his rejection of cooperative federalism as a model for national policy-making, and his concomitant strategy of bypassing provincial governments by appealing directly to citizens.

As the groundwork for Meech Lake began to be laid in 1986 and 1987, conditions for a successful resolution of the Quebec issue could hardly have seemed more propitious. The federal government not only held a huge overall majority, but more importantly had strong support in all regions. It was hard to imagine any government better equipped to bridge regional and inter-governmental conflicts. In the early years of the Mulroney mandate, there appeared to be a level of intergovernmental harmony not seen for many years. In Quebec, meanwhile, the nationalist drive had considerably weakened as attention shifted to the economic realm. The Parti Québécois was divided and seemingly ineffective. It had been re-elected following the 1982 settlement, but on 2 December 1985 it lost to the Liberals under Robert Bourassa. Bourassa stressed his own commitment to federalism and, like Mulroney, was committed to settling Quebec's place in the federation.

In May 1986, Quebec Intergovernmental Affairs Minister Gil Rémillard announced Quebec's conditions for reintegrating with the federation at a conference held at Mont Gabriel, Quebec.<sup>7</sup> They included constitutional recognition of Quebec's status as a "distinct society" within Canada, restoration of a Quebec veto over constitutional amendments, constitutional status for an enhanced Quebec role in immigration, some limits on the federal power to spend in areas of provincial jurisdiction, and constitutional entrenchment of Quebec membership on the Supreme Court. These conditions were to later become the chief elements of the Meech Lake Accord. It was a modest list, with none of the claims for broader powers that had characterized the objectives of all Quebec governments since the 1960s.

Events then moved quickly. In June the Prime Minister wrote to the premiers, urging them to enter a new process and to respond sympathetically to the Quebec position. Shortly thereafter, at their annual conference, all of the premiers endorsed the "Edmonton Declaration," committing themselves to negotiations based on Quebec's five conditions. According to the communique, this agenda would take top priority; other constitutional issues, such as Senate reform, would be delayed until the next round.<sup>8</sup> Over the next few months, the federal negotiating team — led by Senator Lowell Murray, Minister of State for Federal-Provincial Relations, and Norman Spector, Secretary to the Cabinet for Federal-Provincial Relations — worked with the provinces to prepare for a meeting of the first ministers.

The first ministers met alone and in private at the government retreat at Meech Lake on 30 April 1987. With only one federal and one provincial official present, the First Ministers unanimously agreed in principle on the Meech Lake Accord. It was quickly endorsed by the leaders of the federal Liberal and New Democratic parties and was endorsed in hearings of the Quebec National Assembly.

In the next few weeks opposition to the Accord began to mobilize. Much of it was crystallized by former Prime Minister Trudeau, who attacked the Accord root and branch. It was a betrayal of all he had fought for: "Those Canadians who fought for a single Canada, bilingual and multicultural, can say goodbye to their dream."<sup>9</sup> The barrage of criticism suggested some second thoughts as the first ministers reconvened at the Langevin office block in Ottawa to turn the text into formal constitutional language. In the end, it took a marathon 19 hour session, ending at five a.m., with a haggard group of leaders announcing their unanimous agreement on the 1987 Constitutional Accord. Again, both federal opposition leaders announced their support. Initially, then, the Accord seemed to have met the tests of both federalism and parliamentary government, and its swift ratification seemed assured.

### THE RATIFICATION EXPERIENCE

Now, for the first time, the procedures for constitutional amendment adopted in the *Constitution Act, 1982* were to be followed. The first requirement of these procedures was ratification by Parliament and the provincial legislatures. Some provisions of the Accord fell into the category requiring unanimous agreement (Section 41); others could have been adopted under the general amending procedure of seven provinces with 50 percent of the population (Section 38). It was assumed by those directly involved in the process that the whole package must stand together and be passed by unanimity, though much later in the story there was some suggestion of breaking it into its parts and passing each of them separately.

The first province to ratify the Accord was Quebec, where the National Assembly passed the Resolution on 23 June 1987 by a vote of 95-18. According to Section 39(2) of the Constitution, this first legislative adoption started the clock ticking for the three year deadline — *all* legislatures would need to ratify by 23 June 1990. Perhaps reflecting the uneasiness of governments as opposition grew, passage through the other legislatures was slow. Three more — the federal House of Commons, Saskatchewan and Alberta — had done so by the end of 1987. By mid-1988 nine of the 11 legislatures had ratified the Accord.

However, full ratification was still two provinces short of unanimity. The government of New Brunswick Premier Richard Hatfield, one of the staunchest supporters of the Accord, was swept out of office in October 1987 in a landslide election which saw the Liberal party, under the leadership of Frank McKenna, win all of the province's seats. McKenna had serious misgivings about the Accord. He was especially concerned with the effect of the language clauses on New Brunswick's Acadian community, which initially opposed the proposed amendment; with the implications of limits on the federal spending power; and with the potential implications of the distinct society clause for the Charter.

Interests opposed to the Accord from across the country rallied to McKenna's support. For the first time, they realized it might be possible to stop or at least, force major changes to the Accord.

Then, in March 1988, the New Democratic government of Howard Pawley, perhaps the most reluctant of the original signatories, lost a vote of confidence in the Manitoba legislature. In the subsequent election, a minority government headed by Conservative Gary Filmon was elected. A resurgent Liberal party led by Sharon Carstairs, a passionate opponent of the Accord, went from one to 20 seats; and the New Democrats were reduced to 12. Ms. Carstairs announced on election night that Meech Lake was now dead. Minority government created a crucial, political dynamic in the province: in the context of deepening hostility to the Accord, any two parties could defeat it. On 19 December 1988, Premier Filmon, citing Quebec's new law on the language of signs, withdrew the Meech Lake resolution from the legislative agenda. The following spring, the government established a legislative task force, chaired by a non-partisan professor, to study the proposed amendment. Its later *Report* went considerably beyond McKenna's criticisms.<sup>10</sup>

In April 1989 there was yet another change of government, this time in Newfoundland where the Liberals, led by Clyde Wells, defeated the Conservatives. In an instant, the Newfoundland position on Meech changed. Among the original signatories of the Accord, former Premier Brian Peckford had been perhaps the most ardent English-speaking advocate of a province-centred Canada. Mr. Wells, a former constitutional lawyer for Mr. Trudeau, was now the most centralist of the premiers, tying Newfoundland's interests to the need for a powerful central government. He passionately rejected any special legislative status for one province; he argued that the new requirement of unanimity for Senate reform would block future changes forever. As he unsuccessfully sought to convince other governments to consider substantial amendments to the Accord, he threatened to revoke his province's ratification of the Accord. On 5 April 1990, as the end of the drama approached, the Newfoundland House of Assembly finally did so.

Thus, as the 23 June deadline approached, the question for the advocates of Meech Lake was whether the dissident provinces could be persuaded to approve the Accord as it stood. If not, could it be modified in order to meet at least some of the objections, while not losing the support of Quebec? If it were to be modified, there were a number of ways to do so. One would be to amend the Accord itself, which would of course require repassage in all the legislatures and, hence, the start of a new three year process of ratification. Another was to pass — either simultaneously with Meech Lake, or immediately afterwards — a “companion” or “parallel” Accord.<sup>11</sup> Such an agreement could not easily change the meaning of the Accord without threatening the original consensus,

but it could address some of the additional constitutional issues which others were putting forward.

The political dynamics made either strategy very difficult. As the list of proposed changes and additions grew on one side, public opinion and the media in Quebec increasingly noted how modest were Quebec's gains, and saw passage of an unaltered Accord as the litmus test of the intentions of English Canada towards Quebec. Critics asked why Quebec could not compromise; Quebec argued it had already compromised.

Throughout, the federal and Quebec governments stressed that no change to the proposed amendment could be contemplated. As 1990 began, this position seemed increasingly untenable. In March, Premier McKenna introduced resolutions that tied New Brunswick's ratification to the adoption of a second, companion agreement. The premiers of the four western provinces welcomed McKenna's proposals and announced the formation of a "Western Canada Task Force on Meech Lake" to explore proposals to save the Accord. Recognizing the trouble the Accord was in, Prime Minister Mulroney announced on 26 March 1990 the formation of a special House of Commons committee, chaired by Quebec MP Jean Charest, to hold hearings and consider the New Brunswick proposals.

The committee reported on 18 May 1990, recommending passage of the Accord along with a "Companion Resolution" that "adds, without subtracting," to the original provisions of the Accord.<sup>12</sup> The polarization, however, was beginning to take its toll. Premier Bourassa reiterated his opposition to any change in the text of Meech Lake; and two Quebec Conservative MPs, including Lucien Bouchard, one of Mr. Mulroney's closest and most trusted lieutenants, resigned from the Tory caucus.

There was thus little room for movement. Moreover, time was running out. Manitoba, with its delicate three-party balance, and with legislative rules that required extensive public hearings, was especially insistent that a First Ministers' Conference should be held as early as possible in order to assure passage of any agreement before the 23 June deadline. The Prime Minister, however, insisted equally strongly that no meeting could be held until success seemed certain. His strategy was to raise the stakes as high as possible in order to place the blame for failure clearly on the dissidents, and to increase the pressure by convening a meeting as close to the deadline as possible. Indeed, there was a growing sense of crisis in the country; the costs of failure seemed to be escalating rapidly.

Finally, the Prime Minister called the premiers to a dinner in Ottawa on the evening of 3 June, at which it would be decided whether there was sufficient consensus to convene a formal First Ministers' Conference. Yet another extraordinary episode in executive federalism and constitution-making started. The dinner meeting, which began on a Sunday evening, did not really end until

late the following Saturday night, 9 June. The first ministers met alone on the fifth floor of the National Conference Centre almost continually, emerging frequently to consult their advisors, and to deliver cryptic messages to the several hundred journalists present or to the hundreds of citizens clustered outside the hall. The dynamic once again was whether the three dissident provinces could be persuaded to accept the Accord, and whether Quebec could accept additions and an agenda for further constitutional change that did not undermine its achievement at Meech Lake. It was also essential to the goals of the Prime Minister and several of the other premiers to avoid the isolation of Quebec at all costs; if Meech were to go down, it must not be because of a veto by Quebec, once again standing alone. This meant that there was a need to find a formula that would at once provide the dissidents with "certainty" about future constitutional change, and leave the Meech Lake Accord intact.

The strategy called for bringing the dissidents on board one by one. First, New Brunswick's Premier McKenna, whose search for a compromise had initiated this latest stage, indicated his support. Then by Friday Premier Filmon and the two Manitoba Opposition leaders, Sharon Carstairs and Gary Doer, agreed that they would recommend acceptance to the Manitoba legislature. Ms. Carstairs was apparently influenced by Jean Chrétien who was about to win the leadership of the federal Liberal party. Chrétien had supported Mr. Trudeau's position on the Accord, but was no doubt concerned to shore up his Quebec support, and fearful of assuming the leadership in the context of a bitterly divided party and country. That left Premier Wells of Newfoundland, from the start the most ideologically opposed to the Accord. The pressure on him was immense. He was torn between his deeply held objections to the Accord, and the realization that his veto alone could scuttle the proposed amendment and launch the country on a new and uncertain course. Tempers frayed in the exhausting hot-house atmosphere; the outside world seemed increasingly to have reality only in the Greek chorus of the press. Ideas were put on the table, modified, and then dropped. Agreement seemed tantalizingly close at one moment; anger and despair came a moment later.

But late in the evening on Saturday a deal seemed to have been done. At last the Prime Minister opened the formal First Ministers' Conference in the glittering conference hall. The mood was euphoric, and mutual congratulations flowed across the table. A companion accord — formally titled the *1990 Constitutional Agreement* — had been reached, and it did seem to address in some way virtually all the major criticisms that had been raised against the Accord, while committing the three provinces which had not yet ratified it to use all their powers to "achieve decision" before 23 June.

However, it soon became apparent that passage was by no means assured. To begin with, Premier Wells had only committed himself to place the resolution before his legislature, not to urge its passage; rather, he would at best be

neutral. Moreover, in the closed atmosphere of the conference the participants had not fully realized that while Mr. Wells was the "odd man out" in that setting, he was a hero to many Canadians outside. By failing to be able to bring him to outright endorsement of the Accord, the way was left open for him to change his mind. This began almost as soon as he left the conference. With the pressure from his colleagues gone and vociferous applause from his supporters awaiting him, his visceral dislike of the Accord returned to the fore. Nevertheless, he agreed to submit the resolution to the Newfoundland House of Assembly, and gave members several days to test the waters in their constituencies.

In Manitoba, too, ratification was no sure thing and time was short. Public hearings were mandatory, and at once several thousand citizens declared their wish to be heard. The hearings, however, never began as quick referral to a committee for such purposes required a unanimous vote of the Assembly. The country was mesmerized as day after day Elijah Harper, the lone aboriginal member of the Assembly, calmly refused to allow for such unanimous support. It eventually became clear that it would simply be impossible to meet the deadline of 23 June.

On 22 June, there was a final flurry as Ottawa explored possible ways to extend the deadline, including a proposal to refer to the Supreme Court the question of whether the three-year rule in the amending formula could be seen as a rolling deadline, starting anew as each legislature ratified it. In other words, the three-year deadline would be extended to 23 September 1990, three years after the second legislative approval of the Accord in Saskatchewan. The court reference would have been linked to the Manitoba problem with the deadline; Ottawa would have proceeded only if Newfoundland acted. This procedure infuriated Premier Wells who saw it as one last desperate federal effort to manipulate the process. So on the final day, he wound up debate in the legislature, excoriating both the content of the Accord and the process that had produced it, ending with the announcement that there would be no vote. Thus, the Meech Lake Accord died. What had begun as a seemingly modest and limited attempt to renew Quebec's participation in the Constitution had ended in farce and failure. Divisions that had been muted and quiescent three years earlier were now raw and angry; reconciliation had become fragmentation.



## WHY MEECH FAILED: SOME EXPLANATIONS

Could the outcome have been different? Or was the Accord flawed from the outset and bound to fail?

### LEADERSHIP

The first possible explanation for the failure might lie with the first ministers themselves: it was a failure of leadership. A number of observations support such an interpretation.

In retrospect it might be argued that it was a mistake to raise the issues in the first place. The politics of federalism was relatively harmonious, and there seemed to be little urgency. To the observation that conditions were uniquely propitious, it might be replied that under such conditions, there are few incentives to compromise — and that it is crisis and fear of the cost of failure that lead to agreement. Yet it is important to recall how damaging the isolation of Quebec was to the long-run legitimacy of the constitution. It is hard to question the motives of the Prime Minister and his colleagues in setting the process in motion.

More questionable are the tactics used to promote the Accord. In the early stages, the effort was to minimize public attention and public debate especially given the weariness of the Canadian public in the mid-1980s with constitutional conflict. After all the united support of all premiers seemed to assure ratification. Little attempt was made to inform the public of the issues or to stimulate support; the contrast with the federal government's strategy to sell the Canada-U.S. Free Trade Agreement is striking. Then, as popular mobilization against the Accord grew, it appeared to be impossible for the proponents to switch to a more public strategy. Instead, the government's strategy in the few remaining months before the deadline was less to advocate the benefits of the Accord than to emphasize the costs of failing to pass it. While some opponents were swayed by this argument, others reacted against a politics of fear — however correct it might be — and argued that if there were a crisis, it was an unnecessary and artificially-induced one.

Quebec Premier Robert Bourassa also acted in ways that stimulated opposition — notably in his language policies, his refusal to contemplate any change in the Accord, and his unwillingness to articulate a strong commitment to federalism itself. These fostered a sense of Quebec intransigence and of a weak commitment to the federation. The underlying problem, however, was that his opposition in Quebec was the nationalists: the political imperative to keep them at bay outweighed the political imperative to build support for the Accord outside Quebec.

The other criticism directed specifically at the first ministers was that they were manipulating the constitution largely in their own or their institutional

self-interest: that is, that Meech Lake responded to governmental rather than citizen concerns. While this is true in part for any intergovernmental issue, the evidence, for a number of premiers at least, is that their continued support for the Accord in the face of mounting opposition cost them dearly in political terms. In this sense, at least, they were leading in a principled way.

In general, therefore, while there is much to criticize in the way in which the Prime Minister and premiers conducted the Meech Lake constitutional exercise — especially in the final stages — a focus on leadership style and personal failings does not go far towards an explanation of the collapse of Meech Lake.

#### PROCESS

##### *(a) the 1982 amendment procedures*

More substantial are the difficulties posed by the process of constitutional amendment. Apart from the post-1982 Aboriginal conferences, this was the first full test of the amending procedures enacted in 1982. Three characteristics of these procedures posed particular difficulties: the unanimity rule for certain changes, the three-year rule, and the new requirement for legislative ratification.

As Pierre Trudeau and others have argued so forcefully, unanimity is inherently difficult to achieve on constitutional matters. It is a potential strait-jacket in which power belongs to the hold-out. It is likely that at least one actor will prefer the status quo to any of the alternatives for change which are under discussion. It was the Supreme Court's declaration that "substantial consent" did not imply unanimity that made the 1982 settlement possible; but the *Constitution Act, 1982* restored the rule for a limited set of constitutional changes. Meech Lake itself extended the rule to encompass Senate reform and the admission of new provinces.

Given the inherent difficulties, it is important to recall why unanimity was built into the amending procedure. First, there is a case to be made that constitutional change, especially to fundamental national institutions, should indeed require very high levels of consent, if not complete unanimity. More particularly, there is an even stronger case that Quebec, the second largest province and the only one with a French-speaking majority, should be able to ensure that no coalition of primarily English-speaking jurisdictions should be able to impose its constitutional values on it. But to assign Quebec alone a veto would undermine a second constitutional principle which has recently achieved greater prominence — that of provincial equality. Hence, if Quebec were to be assured a veto, so must each of the other provinces, and the unanimity rule results. A more explicit recognition of Quebec's distinct status would permit a somewhat more flexible formula.

Unanimity rules also cut two ways: they are a tool for those who fear change being imposed on them, but a barrier for those who wish to achieve change. This created a major dilemma for premiers like Alberta's Don Getty with respect to Senate reform. Opponents argued that the extended unanimity rule would block forever the chances of significant change; the reply was that *without* Meech Lake, serious discussion of Senate reform could hardly begin.

It is clear that future discussions must review the unanimity provisions, though change is unlikely, since the amending process itself is also subject to unanimity. Among the alternatives are utilization of a referendum procedure, whether as a deadlock-breaking device after some period has passed, or as an alternative to legislative action, as in Switzerland and Australia. The companion Accord, agreed to at the June 1990 First Ministers' Conference (FMC) but not implemented, contained a provision (a "sunrise" clause) that envisioned certain changes automatically coming into effect if unanimous agreement on broader change had not been achieved within a certain time. Another alternative discussed in June was the possibility that if no unanimous agreement was reached after a certain period, then the formula would revert to something less than unanimity, such as seven provinces with 50 percent of the population.

Another important feature of the 1982 amendment procedures was the three-year time limit for ratification. According to Section 39(2) of the Constitution, a proposed amendment dies if it has not been ratified by the requisite number of legislatures within three years of its passage by the first. It appears that there was little discussion of the implications of this rule when the amending formula was developed. The objective was to ensure sufficient time for all legislatures to act without having a proposed amendment languish indefinitely. On the surface, the Meech experience suggests that perhaps three years may be too short a period since, in the end, time did run out. However, this was more likely a result of the brinkmanship tactics employed than of the rule itself.

In fact, the three-year period seems too *long*. Not only did it give ample time for opposition to mobilize, but also it made it virtually inevitable that a number of elections would have been held and thus that governments not part of the initial bargaining, and not committed to its success, would have been elected. This happened in three provinces, partly because the incumbent governments delayed introducing the necessary resolutions. While it may be necessary to maintain the three-year rule, passage of resolutions in the future would be more effectively facilitated by a requirement that a resolution be at least introduced within a much shorter period of, say, 30 to 60 days.<sup>13</sup>

The third innovation, legislative ratification, was the most crucial. It moved ratification out of the direct control of executives and allowed comment by a much broader range of participants. In the case of Meech Lake, legislative involvement highlighted a deep and inherent tension between the logic and

requirements of parliamentary government and of intergovernmental relations as they have evolved in Canada. The logic of the former is of course that executives are responsible and accountable to their legislatures. The logic of the latter is that governments must be able to make binding agreements with each other. Many observers have pointed out this tension,<sup>14</sup> but in most circumstances it does not pose a practical problem, since in a cabinet system, governments usually dominate legislatures.

However, three factors changed the equation with the Meech Lake Accord. First, when minority governments are elected (as in the case of Manitoba), much power flows back to legislatures, or at least to opposition parties. Second, in a number of legislatures, public committee hearings on major issues have become the primary channel for citizen participation.

Third, the federal government's position on the Accord was that it was a delicate, complex compromise, a "seamless web" to be passed unchanged by every legislature. If changes were made, then intergovernmental discussion would have to be reopened. Consequently, all legislatures would have to act again in what could be a never-ending process in which the whole agreement could unravel. However much this conformed with the logic of federalism, it was a red flag to opponents who argued, justifiably, that consultation with citizens was a sham if it was known in advance that it could have no effect short of outright rejection. A more open process raised expectations that could not be met.

It is clear that if future amendments must pass both the federal and parliamentary tests, and if consultation is to be meaningful, some way must be found to integrate them. One way might be to ensure legislative and public involvement much earlier — before governments put their signatures to agreements. No such discussions were held prior to Meech. Ironically, the Accord opened up one possibility for doing this: it stipulated that there were to be annual FMCs on the constitution. If these were to be held on a specified date, with a known agenda, then legislative committees could canvass public views in advance; and those views could then inform the positions taken by first ministers.

The companion accord proposed at the June 1990 FMC also hinted at some possibilities. One was to suggest that there might be a formal requirement for "mandatory public hearings prior to adopting any measure related to a constitutional amendment, including revocation of a constitutional resolution."<sup>15</sup> Another possibility was the Federal-Provincial Commission proposed to examine Senate reform. If such a national commission could hold national public hearings early on, and if it were made up of legislators, it could help bridge the parliamentary and intergovernmental processes. It could also help forge a national consensus before government positions had hardened. More radical proposals, such as referenda or special constitutional conventions, would at

some point in the process transcend both parliamentary and federal procedures.<sup>16</sup>

(b) "*executive federalism*"

If the Meech Lake experience raised serious questions about the workability of the 1982 amending formula, it was an even greater challenge to the practice of "executive federalism." As initially defined by Donald Smiley, executive federalism refers to policy-making by ministers and civil service professionals in intergovernmental relations. Ministers such as Senator Lowell Murray in Ottawa, Ian Scott in Ontario and Gil Rémillard in Quebec, along with officials such as Norman Spector in Ottawa, did indeed play crucial roles. However, a more accurate term for the latest round of constitutional reform is perhaps first minister federalism. In that process, the attention was sharply focused on the first ministers themselves — whether at Meech Lake, at the Langevin Block, or finally in the National Conference Centre. Officials and ministers were close by, but only first ministers were at the table. This appears to accord closely with Prime Minister Mulroney's own preferences for negotiation by personal interaction among senior decision-makers. While such a process can facilitate agreement by building solidarity among the participants, it runs the risk of isolating them from their larger constituencies.

Such isolation and privacy gave rise to the telling criticism: "What right do 11 men, locked in a room, have to change *my* Constitution?" The phrase distills the critique: the process was seen as elitist and unaccountable; the participants were seen to be unrepresentative; the process was illegitimate; and the Constitution had come to be seen as the property not of governments, or even legislatures, but of "the people." Whatever their differences in their substantive critiques of the Accord, all opponents could agree on their anger at the process. This anger spilled over to taint virtually all aspects of the Accord itself. The final conference represented the worst of both worlds: cut off from the outside world the first ministers failed to appreciate how much trouble their agreement would be in once the conference was over; pressed by the media and anxious to put the right "spin" on what was going on, information quickly spilled out of the conference room, losing most of the advantages of privacy.

"Elite accommodation" has been a hallmark of Canadian politics throughout our history. Indeed, Arend Lijphart<sup>17</sup> and others have given it a principled defence: in a country as deeply divided in regional and cultural terms as Canada, unity is maintained through collaboration among leaders who, in contrast to the mass of citizens, are said to perceive the importance of accommodation and compromise in preserving the whole system. If citizens are mobilized, the argument runs, the disagreements will be manifest for all to see.

Whatever its merits, the model depends for its success on citizen deference to their leaders. That condition no longer holds in Canadian constitutional politics. The failure to recognize this profound change is, I believe, perhaps the single most important reason for the failure of Meech. Despite all the attempts to keep the issue low key, to minimize participation and to avoid controversy, it simply was impossible to contain the debate. Too many groups had come to perceive a direct stake in the Constitution; and too many of them had the knowledge, political sophistication and communications networks for elite politics to prevail.

The large political question this raises is whether the elite theorists are right. If the process had been a great deal more open and consultative from the start, and if ratification had required some form of popular approval, would the chances of finding a constitutional settlement have been lesser or greater? It is impossible to know for certain. What is certain is that the elite process of first ministers failed not only on the grounds of democratic legitimacy, but also on the grounds of efficacy or effectiveness — the Accord did not pass. It is probably also true that by the *end* of the Meech Lake process, popular hostilities based on language and other matters had hardened to such an extent that a truly participatory process would indeed have generated not consensus but division. That, however, begs the question that if citizen and group involvement had been greater from the start, and if the groups had been able to interact with each other, would they then have been able to find common ground? It is, of course, difficult to imagine or design such alternative procedures, but answers to questions such as these will be crucial in considering how constitution-making is to be carried out in the future.

#### SOCIETAL CHANGE AND CONSTITUTIONAL DIFFERENCES

Procedural explanations go far towards explaining the Meech failure, but they are not sufficient. Indeed, the procedural critique drew its force from a larger set of changes in the Canadian society, culture and economy. These changes not only challenged the process of constitution-making, but also greatly broadened the constitutional agenda and widened the gulf which constitutional accommodations had to bridge. The Accord ultimately failed because it was unable to find or to create a national consensus on the essence of Canadian federalism.

Older divisions persisted; they interacted powerfully with a newer set of issues and concerns to produce a broad and diverse coalition opposed to the Accord. This opposition operated at two levels: for some it was principally a matter of specific provisions, such as the adoption of the unanimity rule for Senate reform and the creation of new provinces; for others, it was less the detail than the underlying logic and symbolism of the Accord. In addition, criticisms

focused both on what was included in the Accord and on what it left out. Throughout, the debate on the Meech Lake Accord was influenced by events in the larger political arena.

The primary context for the Meech Lake debate was the increased participation of constitutional politics, a legacy both of larger changes in Canadian political culture, and of the 1980-82 constitutional process. More and more Canadians had come to see the constitution as the property of "the people" rather than as the property of political elites. Hence, as we saw in the previous section, constitutional change without extensive citizen participation has become illegitimate. Equally important, more and more groups had come to see the constitution as a crucial vehicle through which they could defend or advance their own interests. Several consequences flowed from this. The constitutional stakes were seen to be large, therefore there was little willingness to compromise or to sacrifice one's interests for the larger pool of constitutional accommodation. Given the perceived stakes, there was a strong desire for constitutional certainty, and an unwillingness to tolerate the ambiguities and uncertainties that characterized the Accord itself — just as they have shaped all other constitutional documents. It was indeed difficult to state with certainty what the implications of the spending power provisions would be or how precisely the distinct society clause would interact with the Charter. The combination of the symbolic stakes and distrust of elites led many to suspect the worst and to insist on precise and detailed limits. Finally the politicization of constitutional debate rendered it impossible to limit the discussion to the specific issue of Quebec: too many groups saw that accommodation as threatening other constitutional values and leaving them out. In such a framework all constitutional issues are on the table simultaneously; it is impossible to deal with them sequentially.

Another and related change in attitudes to the Constitution stems from the Charter of Rights and Freedoms. Those who predicted it would transform how Canadians think about politics have been proven right.<sup>18</sup> The Charter has elevated the concern for individual rights, and undermined the legitimacy of collective or community rights. And insofar as the Charter does treat group rights as legitimate, it is less the collective rights of language groups than it is the rights of communities defined in other ways, such as gender. These changes underlie the widespread rejection of the fundamental premise of Meech Lake: the recognition of Quebec as a distinct society, with the fear that Quebec might be permitted to undermine the Charter in the province. Although the "notwithstanding clause" is a product of the *1982 Constitution Act*, rather than of Meech Lake, the anger over Quebec's use of it in Bill 178, the sign law, was a dramatic illustration of the change in view. Indeed it can be argued that there was more bitterness over Bill 178 outside Quebec than there had been over the Parti Québécois' initial language legislation, Bill 101. In this sense there may

be less willingness to accept the collectivist image of Quebec as a distinct society than there had been in the 1960s and 1970s; changes once acceptable seem less so as a result of cultural change in Canada outside Quebec. Meech Lake reflected not only the tension between federalism and parliamentarism, but also the tension between both of these and the Charter.

The final dimension of politicization is the fragmentation of Canadian society and the mobilization of new groups into the constitutional arena. The resulting divisions precluded consensus on constitutional reform. Some of these divisions are the traditional, historic cleavages that have dominated Canadian politics throughout its history. First is language. Two models for reflecting the presence of English and French-speaking Canadians have always been in contention: bilingualism on a national level versus territorial unilingualism, suggesting a predominantly French-speaking Quebec and an English-speaking rest of the country. Both were reflected in the Meech Lake Accord; the debate suggests neither can command a broad consensus. Trudeau, Wells and Carstairs, among many others, attacked the distinct society model, with its implication that language rights were rooted in territorial considerations. Recognition of Quebec as a distinctive, predominantly French society, in their view, could only undermine the rights of minority language groups. Moreover, it was a step whose logical conclusion could only be a radical "special status" for the province, if not outright independence. Language rights were to be held as a right of individuals, protected by national institutions.

Such fears found apparent confirmation in Quebec's own language laws. In December 1988, a unanimous Supreme Court of Canada decision struck down provisions of Quebec's language law, Bill 101, respecting the use of English on store signs. Soon after, Quebec passed new legislation, Bill 178, invoking the "notwithstanding clause" of the Charter to protect it against further challenge. Perhaps more than any other event, this turned opinion against the Accord, even though it did not stem from the Accord itself. If this is what "distinct society" means, many seemed to say, we are opposed to it. The individualist culture of English-Canada was unwilling to accept that Quebec's concerns for its linguistic security in the face of large-scale immigration justified limits on individual freedoms.

On the other hand the alternative, national bilingualism, also seemed to be under attack. Alberta's and Saskatchewan's language policies had been challenged in the Supreme Court which held them a violation of the provisions of the nineteenth century Northwest Territories Act.<sup>19</sup> Since the Act was not part of the Constitution, the two provinces were able to pass new legislation granting much more limited language rights. Hostility to bilingualism was also prominent in the growth of the Reform party in the west. And elsewhere, increasing agitation by groups such as the Association for the Preservation of English in Canada (APEC) encouraged numerous cities, led by Sault Ste. Marie,



to pass "English only" resolutions in their municipal assemblies. These and related events had an impact in Quebec parallel to the impact of Bill 178 outside it. They also help account for the eventual support of Meech Lake by most francophone groups outside Quebec, as they realized that the future of minority language rights elsewhere in Canada would be in grave danger in a Canada without Quebec.

Regional divisions also undermined the Accord. In part, this was due to events outside the Meech Lake arena. Such divisions were evident in the economic difficulties faced by oil and agriculture in the west, and a sense in Atlantic Canada that under the pressures of fiscal deficits and free trade, the ability and willingness of the federal government to pursue effective regional development strategies was weakening. Westerners were also angry that the Tories, in striving to build their support in Quebec, appeared to be neglecting the west. The catalyst for much of this anger was the federal government decision to award a contract for servicing Canada's CF-18 fighters to Montreal instead of Winnipeg, as an expert group had recommended. Other indicators of renewed western discontent mounted. The Reform Party of Canada held its founding convention in Winnipeg in October 1987; in March 1989, it elected its first MP from Alberta. In October, the Government of Alberta's scheme to elect its Senatorial nominees resulted in the selection of another Reform Party candidate, Stan Waters.

The Accord itself also sparked considerable regionally-based opposition. Support for Senate reform had become the rallying cry for a great many westerners, and many echoed Premier Clyde Wells in arguing that given the requirement of unanimous agreement for Senate reform in the future, there was little likelihood it would ever happen. Wells and others argued equally strongly that the Meech Lake limits on the federal spending power would have the effect of preventing new national initiatives to alleviate regional disparities. This regional disaffection with the Accord, especially in the west, was a major political challenge to all three western most provincial governments which makes their continued support for it all the more remarkable.

A third basis for opposition, drawing support from across the country, was the belief that the Accord was inherently decentralizing, weakening federal powers while strengthening that of the provinces. Opponents criticized provisions such as the provincial nomination of Supreme Court judges and Senators, constitutional entrenchment of First Ministers' Conferences and, most important, the new Section 106A on the federal spending power. While defenders of the Accord argued that the section applied only to a narrow set of programs, and may indeed enhance rather than weaken Ottawa's ability to intervene in areas of exclusive provincial jurisdiction,<sup>20</sup> opponents saw it as reducing the federal power to establish national objectives and set national standards. This concern for the diminution of federal power linked up with yet

another external event — the debate over the Canada-U.S. Free Trade Agreement, signed in 1988. Ottawa was perceived by many as losing authority in two directions at once.<sup>21</sup>

While such concerns were strongly articulated, their resonance is hard to weigh. Elsewhere in this volume Michael Adams argues that survey evidence suggests strong centrifugal forces, diminishing Canadians' identification with the national government and increasing their tendency to look for increased provincial powers. Sorting out just what roles Canadians do expect the two orders of government to play will be a central issue after Meech Lake.

If much of the criticism of Meech Lake tapped older divisions, it also tapped new identities and concerns from groups who felt they were not reflected in the Accord. In the early stages, some of the most trenchant criticisms of the Accord came from the women's movement outside Quebec. Their critique centred on the implications of the distinct society clause for the Charter, especially for Section 15 concerning discrimination and Section 28 which guarantees all rights equally to women and men. They were especially angered when Section 28 was not included in a section of the Accord exempting multicultural and aboriginal rights from the operation of the distinct society clause. Women's groups were also concerned that limits on the federal spending power could frustrate development of new programs with national standards in fields like child care. These and other arguments were powerfully and effectively expressed. Similarly, multicultural groups, a growing proportion of the Canadian population, especially in major cities, did not see themselves reflected in the Accord.

Finally, Canada's aboriginal peoples opposed the Accord. Their frustration was greatly increased by the fact that the Accord was reached only a short time after the failure of the final conference, held in March 1987, mandated to define aboriginal rights more precisely in the 1982 settlement. They felt their concerns could be set aside while Quebec and the rest of the country solved their problems.

For all three groups — as well as residents of the northern territories — it was the symbolism of Meech Lake that was wrong. The Accord was about federalism and Quebec; it seemed to do little to accommodate other definitions of Canadian society, or to recognize newly emergent forces. It seemed to be about an older Canada. Moreover Section 1 of the Accord, dealing with dualism and the distinct society seemed to define the fundamental characteristics of Canada. If so, where were they? And what did the rhetoric suggesting the primacy of two founding peoples imply for the significance of the original founding peoples, or those who, coming later had continued to help define and change Canada?

It is impossible to weigh the contribution of each of these strands of opposition to the demise of Meech Lake. In some cases the opposition coalition made

strange bedfellows, for example the opposition to bilingualism represented by APEC had little in common with the support for bilingualism of leaders like Clyde Wells. But in the dynamics of the debate, the opposition did not need to coalesce behind an alternative vision. Insofar as one issue did knit them together, it was the question of Quebec as a distinct society. It tapped concerns for equality and fairness both at the individual level (in relation to minority language rights and the Charter) and at the provincial level (in relation to the perceived move away from equality of the provinces). For many, if not a majority of Canadians outside Quebec, these concerns outweighed the perceived advantages of achieving the reconciliation of Quebec with the Canadian constitutional order. Many of the opponents stressed their desire to work out such a reconciliation, and even to give some recognition to Quebec as distinct within Confederation — but on terms that did not meet Quebec's original five conditions. Others were not prepared to concede their goals and denied that the failure of the Accord would have a major effect on the future evolution of the federation. Finally, a significant number of citizens — perhaps greater than ever before — seemed prepared to accept the idea of a Canada of which Quebec was no longer a part.

At any rate, the changed political climate in Canada outside Quebec, along with changes in Quebecers' view of the federation suggests that the two societies of Quebec and the rest of Canada were marching to different drummers, and now seemed to have less invested in their continued association. The result was that the Meech Lake debate was in fact two debates, with little capacity or willingness for direct engagement and mutual understanding. It was this gulf in perception and attitude that ultimately accounts for the failure of the Accord.

Explanation for the failure of the Meech Lake Accord thus operates at two levels. One focuses on the more proximate factors: the objectives and tactics of the leaders, and the complexities of the amending process they had to work with. This suggests that if the first ministers, and especially the Prime Minister, had acted differently: anticipating more of the objections, realizing the need for greater and earlier public consultation, avoiding the "brinkmanship" of the final months, and so on, they might well have succeeded. After all, they did come very close: in the end only two small provinces had not ratified the Accord; and for a brief moment it had appeared that even these two would do so. This is a highly plausible view: if just a few things had happened differently in the last stages, Canadians in the summer of 1990 would be confident that their constitution would be enjoying renewed legitimacy.

It is likely that some of more apocalyptic fears raised in the heat of the debate — such as the undermining of the Charter or the diminution of federal power — would have quickly evaporated. In these respects, after all, the Accord was not radical change; rather it was largely an affirmation of the status quo. It

is also likely that, under the terms of the companion accord agreed to in June 1990, steps would be underway to address other constitutional issues in a far less fevered atmosphere.

Plausible as it is, however, this explanation begs some larger questions. It seems almost certain that if there had been a referendum on the Accord in Canada outside Quebec, it would have lost badly. As the debate wore on, the opposition intensified. It was clear that large numbers, however little they knew of the actual content of the Accord, rejected its core assumptions and the process by which it was achieved. And this rejection stems from the broader changes in the politics of the constitution arising in turn from social and cultural change in Canada.

## CONCLUSIONS

Whatever the reasons for its failure, the failure itself appears further to have changed the terms of future constitutional debate. In Quebec the Accord was seen as a minimum recognition of its distinctive role in Confederation; its failure has been interpreted as English-Canada's unwillingness to accommodate this view. In response, there appears to be virtual unanimity among the Quebec political class that Quebec must unilaterally develop and assert its own role. While there is as yet no unanimity on the form this will take, virtually all the alternatives under discussion suggest a far more powerful degree of autonomy for the province than was contemplated in the Accord. Quebec has established a broadly-based Commission to explore the alternatives.

No such unanimity exists in the rest of Canada. The coalition against Meech Lake was not a consensus in favour of any alternative model for relations between English and French in Canada or for the role of the federal government vis à vis the provinces. Moreover no institutions or machinery exist for developing such a consensus. The present federal government will find it difficult to do so. It is hampered initially by its fiscal problems and by its standing in the public opinion polls. Having invested so much in the Accord, it will at least in the short run have difficulty regrouping to develop new initiatives. It is also weakened politically by the defection of a number of its Quebec MPs and their grouping with defecting Liberals into the "souverainiste" Bloc Québécois in Parliament. The Conservatives also face a growing challenge from the Reform party in the west. Nor are the federal Liberals obviously better equipped to forge a new consensus. Meech Lake deeply split the party. It too has suffered defections to the Bloc Québécois. Not only does it remain weak in western Canada, but also it has only three francophone Quebecers in its caucus. In the longer run, there is a distinct possibility that the next election will produce a minority federal government, with the balance of power held by two strong regional parties, both of which are committed to major change, and neither of

which is likely to support strong federal leadership. More generally, Ottawa's capacity to build a consensus in Canada outside Quebec is hampered by the fact that both current party leaders are Quebecers; there is little strong non-Quebec leadership.

Provincial governments may step into the vacuum. However, they also are an inappropriate vehicle for developing a national consensus since they represent ten disparate jurisdictions; and each must focus on its own needs and concerns. None has the primary incentive to focus on the national dimension. Thus the paradox: just as more fundamental initiatives are being developed in Quebec the rest of the country may find itself immobilized. Just as many commentators in Quebec and elsewhere suggest the need to look at radical institutional alternatives, the dominant political reality in English Canada is one of constitutional conservatism. Some vehicles must be found through which Canadians outside Quebec can develop, not only a coherent response to initiatives from Quebec, but also their own sense of desirable constitutional futures.

That debate will have to take into account the demographic and social changes that I have argued undermined the Meech Lake Accord. It will also have to take into account changes in the global and North American political economy. For example, North American economic integration has diminished the relative importance of internal economic linkages, and maintenance of an East-West economy as the fundamental economic rationale for the roles and powers of Canadian political institutions. Changes in the structure of the global economy, and in international trading rules, have eroded the effective capacity of the federal government to manage the national economy, or to act as the agent for redistribution. Events in Europe and elsewhere suggest that the role of the nation-state is changing. Powerful pressures are at work both to move authority upward to supra-national institutions; and, perhaps, to move it downward to smaller, more responsive and manageable institutions. Canadians have barely begun to think through the implications of such changes. The Meech Lake Accord and the debate it engendered was little influenced by them. Future discussions, however, will have to address them directly.

The Meech Lake Accord, in the end, was an attempt to find a consensus that did not exist. From the outset, it was a fragile compromise; and it was recognition of this that accounts for the strategies used to bring it to ratification. The new politics of constitution-making doomed then to failure. In a politically mobilized society the ambiguities, compromises, contradictions that have characterized all Canadian constitutional documents, from 1867 to 1982, are no longer so easily tolerated.

The result is full of irony. Those who fought against the distinct society clause will find a Quebec moving towards much greater distinctiveness; those who worried about Ottawa's capacity and will to fight regional disparities, or

to exercise national leadership are likely to find a weaker Ottawa; supporters of the Triple E Senate will find it even further delayed. Constitutional change, using the procedures adopted in 1982, has come to a halt for the foreseeable future. Events are likely to be driven by crisis, and by decisions taken outside the Constitutional arena. The 1982 amending procedures are unlikely to be effective in such an event.

## NOTES

1. Quebec Liberal Party, *A New Canadian Federation* (Montreal: Quebec Liberal Party, 1980).
2. A full account of this period can be found in John Whyte, Roy Romanow and Howard Leeson, *Canada Notwithstanding ... The Making of the Constitution, 1976-82*. (Toronto: Carswell, 1984).
3. Reference Re. Constitution of Canada, Supreme Court of Canada (1982), 125 P.L.R. (3d), at 103.
4. See Richard Simeon, "National Reconciliation: The Mulroney Government and Federalism," in Andrew B. Gollner and Daniel Sal  e (eds.), *Canada Under Mulroney: An End-of-Term Report* (Montreal: V  hicule Press, 1988), pp.25-47.
5. Extracts from address, Sept-Iles, 6 August 1984.
6. For a fuller discussion of these differences, see Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism*, Royal Commission on the Economic Union and Development Prospects for Canada, Research Studies, vol. 71 (Toronto: University of Toronto Press, 1990), chapters 10 and 11.
7. For the text of this speech, see Peter M. Leslie, *Rebuilding the Relationship: Quebec and Its Confederation Partners*, Conference Report (Kingston: Institute of Intergovernmental Relations, 1987), Appendix A.
8. *Press Release*, 27th Annual Premiers' Conference, Edmonton, Alberta, 10-12 August 1986. This position was reaffirmed three months later at the annual First Ministers' Conference held in Vancouver.
9. Pierre Elliott Trudeau, "Say Goodbye to the Dream of One Canada," in Roger Gibbins (ed.), *Meech Lake and Canada: Perspectives from the West* (Edmonton: Academic Printing & Publishing, 1988), p. 66. This article first appeared in the *Toronto Star*, 27 May 1987.
10. Manitoba, Task Force on Meech Lake, *Report of the 1987 Constitutional Accord*, Winnipeg, October 1989.
11. A discussion of the possible variants of this approach can be found in Ronald L. Watts, Darrel R. Reid and Dwight Herperger, *Parallel Accords: The American Precedent* (Kingston: Institute of Intergovernmental Relations, 1990), pp.61-6.
12. Hon. Jean Charest (chairperson), *Report of the Special Committee to Study the Proposed Companion Resolution to the Meech Lake Accord* (Ottawa: Queen's Printer, 1990), p.9-10.
13. For a fuller discussion of the time limit debate, see chapter 3, "The Myth of the Time Limit," in Gordon Robertson, *A House Divided: Meech Lake, Senate Reform*

- and the Canadian Union* (Halifax: Institute for Research on Public Policy, 1989), and Robert E. Hawkins, "Meech Lake — The Reality of the Time Limit," *McGill Law Journal*, December 1989, 35(1) pp. 196-205.
14. For example, see Donald V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987), chapter 4, and Ronald L. Watts, *Executive Federalism: A Comparative Analysis* (Kingston: Institute of Intergovernmental Relations, 1989).
  15. Canada, First Ministers' Conference on the Constitution, *1990 Constitutional Agreement*, June 1990, p.3.
  16. There are, however, precedents: Australia has both Parliamentary and federal procedures, while using referenda to ratify constitutional amendments.
  17. Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley: University of California Press, 1968).
  18. Alan Cairns and Cynthia Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," in idem, (eds.), *Constitutionalism, Citizenship and Society in Canada*, Royal Commission on the Economic Union and Development Prospects for Canada, Research Studies, vol. 33 (Toronto: University of Toronto Press, 1985), pp.1-50.
  19. Saskatchewan's law repealed s.110 of the 1877 NWT Act; Alberta's, s.110 of the 1886 NWT Act.
  20. For example, see Thomas J. Courchene, "Meech Lake and Socio-Economic Policy," *Canadian Public Policy*, vol.14 (supplement), 1988, pp.63-80.
  21. For a discussion of the linkages between the Accord and the FTA, see Roger Gibbins, "Canadian Federalism: The Entanglement of Meech Lake and the Free Trade Agreement," *Publius*, Summer 1989, 19(3) pp. 185-98; and Ronald L. Watts, "Canadian Federalism and Pluralism: Implications of the Meech Lake Accord and the Canada-U.S. Free Trade Agreement," in Harry N. Scheiber and Malcolm M. Feeley (eds.), *Power Divided: Essays on the Theory and Practice of Federalism* (Berkeley: Institute of Governmental Studies, 1989), pp. 123-38.

## L'échec du Lac Meech: un point de vue québécois\*

Pierre Fournier

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*The failure of Meech Lake can be explained by both immediate and deeper causes. Among the immediate causes, one finds the opposition of the Trudeau-Chrétien duo, the political dynamics in the three opposing provinces, the claims of certain groups (women, linguistic minorities, natives, etc.), Brian Mulroney's strategic errors, and the anti-democratic nature of the process. In most cases, however, these reasons only serve as pretexts and mask the much more fundamental opposition, going as far as rejecting the political consequences of Quebec's distinctiveness.*

*Without doubt it was the emergence in English Canada of new socio-political priorities, and a vision of the federal state largely incompatible with that in Quebec, which was the principal reason for the rejection of Meech Lake. At the same time traumatized by free trade, and worried by the challenges of a multicultural society and American domination, English Canada fears the balkanization of Canada, and seeks its "own" distinct society. In this context, Quebec's aspirations are more and more perceived as contrary to those of the rest of Canada.*

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Ultimement, l'échec de l'Accord découle avant tout des conceptions radicalement différentes et largement irréconciliables du Canada anglais et du Québec par rapport à la réalité canadienne. Néanmoins, plusieurs individus et groupes auront contribué directement et indirectement à bloquer l'adoption du lac Meech. Il s'agit notamment du tandem Trudeau/Chrétien, des provinces récalcitrantes et de leurs chefs politiques, des autochtones, de la minorité anglophone au Québec, et des francophones hors Québec. De même, plusieurs événements, dont l'adoption de la loi 178, la course à la chefferie au N.P.D. et au P.L.C., la victoire de Brian Mulroney et du libre-échange en 1988 et le processus d'adoption de l'Accord auront miné l'entente du lac Meech. Dans

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\* Le texte qui suit s'inspire largement des chapitres 4 et 5 de mon livre, *Autopsie du Lac Meech*, qui doit paraître chez VLB à l'automne 1990.



certain cas, les événements et les groupes joueront un rôle important; dans d'autres cas, il s'agira essentiellement de prétextes qui permettront aux acteurs de camoufler des objectifs et des préjugés inavoués parce qu'inavouables.

## L'OPPOSITION DES GROUPES

A un premier niveau, on pouvait identifier un certain nombre de groupes, qui étaient convaincus que leurs préoccupations et leurs priorités étaient soit menacées soit ignorées par l'Accord. Ensemble, ces groupes représentaient une force de frappe politique considérable. On s'inquiétait notamment que certaines dispositions de l'Accord permettraient au gouvernement du Québec d'outrepasser certaines prescriptions de la Charte.

Des groupes de femmes pancanadiens, par exemple, y compris le Conseil consultatif canadien sur la situation de la femme et le Comité canadien d'action sur le statut de la femme, prétendaient que l'article 16 de l'Accord autorisait le Québec à promouvoir son caractère distinct aux dépens de leurs droits. Ils exigeaient donc que la Charte ait préséance dans son intégralité sur l'ensemble de l'Accord du lac Meech<sup>1</sup>. Au Québec, par ailleurs, les groupes de défense des droits de la femme ne considéraient pas que le caractère distinct du Québec aurait pu être une menace au principe de l'égalité des sexes. Certains commentateurs québécois ont d'ailleurs émis des doutes sur la sincérité de ces allégations. Ainsi d'affirmer Lysiane Gagnon:

Qu'y a-t-il au fond de cette sollicitude non-sollicitée? Serait-ce par hasard une façon détournée et, pour tout dire, aimablement hypocrite, de s'attaquer à la clause du caractère distinct du Québec tout simplement parce qu'on est contre cette reconnaissance-là, qu'on veut un pays homogène mais qu'on n'ose pas le dire carrément?<sup>2</sup>

Du côté des communautés culturelles, on dénonce le fait que les caractéristiques fondamentales du pays soient définies en termes linguistiques, et on demandait que le caractère multiculturel du Canada soit également reconnu comme une caractéristique fondamentale. Selon les communautés, l'Accord du lac Meech aurait subordonné le multiculturalisme à la dualité linguistique et au caractère distinct du Québec. On s'inquiétait donc de la possibilité que le Québec limite l'épanouissement du multiculturalisme à l'intérieur de la province au profit de la langue et de la culture française<sup>3</sup>.

Amenée à l'avant-scène par les gestes spectaculaires du député néo-démocrate Harper dans les derniers jours de l'agonie du lac Meech, l'opposition des peuples autochtones se manifeste néanmoins dès les débuts de la saga du lac Meech. Nourrie par l'amertume des peuples autochtones devant le refus du Canada de leur reconnaître des droits constitutionnels, cette opposition fut renforcée par la conjoncture du printemps 1987. En effet, au mois de mars 1987,

les négociations constitutionnelles concernant les droits des autochtones avaient encore une fois échoué lamentablement<sup>4</sup>.

Dès le début, les autochtones furent convaincus que l'adoption de l'Accord du lac Meech renverrait aux calendes grecques une de leurs revendications les plus chères, soit le droit à l'autonomie gouvernementale. En plus, l'Accord comportait selon eux de graves lacunes parce que la nouvelle règle interprétative de la Constitution (dualité linguistique — société distincte) ne reconnaissait pas leur présence comme une caractéristique fondamentale du Canada, et également parce que seul le Québec aurait acquis le statut de société distincte. Selon les chefs autochtones, on admettait implicitement qu'il n'y avait pas d'autres sociétés distinctes au Canada, sinon elles auraient été spécifiquement identifiées. Ils ne voyaient donc rien dans l'Accord qui, d'un point de vue constitutionnel, leur permettrait de faire avancer leurs droits.

Comme plusieurs autres Canadiens, et notamment les provinces "défavorisées", les autochtones, qui bénéficiaient largement des programmes socio-économiques du fédéral, craignaient les effets possibles sur ces programmes du caractère décentralisateur (selon eux) de l'Accord. Enfin, les autochtones, qui revendiquaient depuis longtemps la création de provinces au Yukon et dans les Territoires du Nord-Ouest où ils forment une majorité, étaient inquiets de l'élargissement de la règle de l'unanimité pour la création de nouvelles provinces.

La communauté anglophone du Québec, pour des raisons politiques évidentes, ne s'opposait pas au statut de société distincte pour le Québec, en autant que cette reconnaissance soit symbolique, et n'élargisse surtout pas les pouvoirs du Québec dans la promotion du français. Alliance Québec préconisait la préséance explicite de la Charte sur la clause de la société distincte, l'abolition de la clause nonobstant, l'élimination du pouvoir du Québec de participer à la nomination de trois juges à la Cour suprême, ainsi que l'enchâssement de la responsabilité des gouvernements fédéral et provinciaux de protéger et de promouvoir la dualité linguistique, c'est-à-dire le bilinguisme. Bref, on demandait une renégociation complète de l'Accord<sup>5</sup>.

Satisfaite des jugements rendus à l'endroit de la loi 101 sur la base de la Charte, la minorité anglophone craignait peut-être de voir l'efficacité de la Charte se dissoudre au profit de la promotion de la société distincte<sup>6</sup>. Il demeure toutefois difficile de comprendre l'opposition de la communauté anglo-québécoise à un accord qui la reconnaissait explicitement et dont les droits et privilèges étaient amplement protégés par la règle de la dualité. Il faut donc croire que le concept même de société distincte rebutait certains d'entre eux à un point tel qu'ils devinrent incapables d'appuyer tout accord contenant une telle disposition.

Mais c'est sans doute au niveau de leur opposition à la loi 178 et de l'image du Québec qu'ils ont véhiculée au Canada anglais que les anglophones auront

eu l'impact le plus dévastateur pour l'Accord du lac Meech. En jouant aux martyrs, les porte-parole de la communauté auront simplement alimenté les préjugés du Canada anglais, tout en leur donnant bonne conscience quant au traitement accordé aux minorités francophones. Sans compter qu'ils faisaient passer le recours à la clause dérogatoire comme étant le visage hideux que pouvait prendre la société distincte...

Les chroniques hystériques de plusieurs journalistes anglophones, notamment William Johnson du journal *The Gazette*, ont discrédité le Québec et les Québécois et ont largement contribué au mouvement canadien-anglais d'opposition à l'Accord en leur renvoyant une image déformée de la réalité québécoise. Alliance Québec s'est même rendu au Nouveau-Brunswick pour demander à Frank McKenna de continuer à bloquer le lac Meech.

Efficace tout ça, puisqu'un sondage effectué en février 1990 révélait que les Anglo-Canadiens croyaient majoritairement que leurs minorités francophones étaient mieux traitées que les Anglo-Québécois. Les réactions disproportionnées et irresponsables de certains dirigeants de la communauté anglophone par rapport à Meech et la loi 178 auront non seulement alimenté le sentiment anti-Meech, mais aussi le sentiment anti-francophone. Ainsi, peu après l'adoption de la loi 178, les gouvernements de la Saskatchewan et de l'Alberta abrogeaient les dispositions linguistiques de la Loi sur les Territoires du Nord-Ouest, les remplaçant par des garanties nettement plus restreintes; et, la Saskatchewan votait la loi 2 relative à l'emploi du français et de l'anglais dans la province, laquelle constituait, selon le Commissaire aux langues officielles, "manifestement un certain recul". Selon Guy Matte, président de la Fédération des francophones hors Québec, il pourrait y avoir une amélioration dramatique dans la situation des francophones hors Québec si les anglophones du Québec donnaient l'heure juste sur leur situation comme minorité<sup>7</sup>.

Néanmoins, ce sont les francophones hors Québec qui ont lancé les premières attaques sérieuses contre l'Accord. Craignant qu'un Québec distinct soit de plus en plus français, et que le reste du Canada devienne de plus en plus anglais, les minorités francophones tentèrent d'obtenir que le gouvernement fédéral obtienne le mandat non seulement de préserver mais de promouvoir la dualité linguistique. Les Acadiens du Nouveau-Brunswick demandèrent en plus que l'égalité des deux communautés linguistiques de la province soit reconnue comme étant une caractéristique fondamentale du Nouveau-Brunswick, que les gouvernements, non seulement du Canada, mais aussi du Nouveau-Brunswick, auraient eu pour rôle de protéger et de promouvoir<sup>8</sup>. Selon Yvon Fontaine, doyen de la Faculté de droit à l'Université de Moncton,

Avec un rôle de protection seulement, il est fort probable qu'il n'y a aucune obligation de légiférer à l'avantage des deux collectivités. Le rôle de protection... imposerait tout au plus un devoir de non-discrimination ou de non-assimilation. C'est pour cette raison qu'il serait souhaitable que le Parlement se voit confier le

rôle de protéger et de promouvoir la dualité canadienne au lieu du seul rôle de la protéger<sup>9</sup>.

Ajoutant l'insulte à l'injure, l'effet combiné de la clause de sauvegarde et de l'obligation des provinces anglaises de protéger, mais non de promouvoir la dualité, retirait en fait aux francophones hors Québec toute possibilité d'élargir leurs droits, et ce, pendant qu'on obligeait le Québec à promouvoir son caractère distinct, dont la minorité anglophone faisait explicitement partie. Tout comme la Constitution de 1867, Meech accordait ainsi un traitement de faveur aux Anglo-Québécois.

On a tendance à oublier qu'au mont Gabriel, en mai 1986, le gouvernement du Québec avait présenté une sixième condition qui visait l'amélioration de la situation des francophones hors Québec. Cette proposition fut rejetée à cause de l'opposition de certains premiers ministres de l'Ouest. Les francophones hors Québec n'avaient pas tort, cependant, d'accuser Robert Bourassa de les avoir abandonnés.

Les leaders des minorités francophones ont donc hésité entre l'approbation tiède et la franche opposition à Meech. Ces hésitations ont merveilleusement bien servi les fins du premier ministre Frank McKenna, puis de son homologue Gary Filmon, qui ont ainsi pu appuyer une partie de leur opposition sur une "noble cause". Suite aux pressions du Québec et du gouvernement fédéral, et de plus en plus convaincus qu'ils risquaient d'être les grands perdants suite à l'échec de Meech, les francophones hors Québec ont fini par se rallier à l'Accord. Ce n'est qu'en février 1990, quelques mois avant l'échéance, que la FFHQ et la Société nationale des Acadiens ont fait volte-face et se sont prononcés en faveur du lac Meech.

Les revendications des groupes opposés à l'Accord, bien que souvent légitimes, auront surtout servi les intérêts des provinces récalcitrantes et de tous ceux qui cherchaient de bons prétextes pour refuser de reconnaître la société distincte.

## LE TANDEM TRUDEAU-CHRÉTIEN: À LA RESCOUSSE DU CANADA ANGLAIS

Aux niveaux idéologique et partisan, l'intervention du tandem Trudeau/Chrétien aura été importante dans l'échec du lac Meech. Le premier coup de massue a été asséné par Pierre Trudeau après l'accord de principe des premiers ministres le 30 avril 1987. Dans une virulente sortie, l'ancien premier ministre a prétendu que l'Accord rendait le Canada impotent, qu'il concédait trop de pouvoirs aux provinces et qu'il représentait une capitulation inacceptable devant les nationalistes québécois, en leur offrant plus que ce qu'ils demandaient eux-mêmes. Il accusait le premier ministre Brian Mulroney d'avoir été faible et lâche. Il était particulièrement sévère à l'égard de la société

distincte qui, selon lui, détruisait le rêve d'un Canada uni, bilingue et multiculturel, et il condamnait l'abandon par le fédéral de ses pouvoirs absolus de nomination des sénateurs et des juges de la Cour suprême.

Robert Bourassa, une des têtes de Turc préférées de l'ancien premier ministre, en était quitte lui aussi pour quelques taloches. Pierre Trudeau l'accusait d'avoir utilisé le chantage, l'outil de prédilection du Québec pour arriver à ses fins, et d'avoir entraîné sur cette voie l'ensemble des provinces. Il le blâmait de ne pas s'être senti lié par le Canada Bill de 1982 et d'avoir choisi de continuer le combat péquiste, s'associant ainsi à la tradition nationaliste voulant que le Québec se soit constamment fait jouer tout au long de l'évolution constitutionnelle canadienne.

La sortie de Pierre Trudeau a eu un impact considérable au Canada anglais, et, en brisant l'unanimité québécoise, elle a déclenché et légitimé de violentes réactions contre l'Accord. Elle a permis que se propage au Canada anglais le mythe tenace qu'il se faisait "passer un Québec". Elle est d'ailleurs passée à un cheveu de faire avorter la réunion du 2 juin à l'édifice Langevin à Ottawa. On se rappellera qu'à cette occasion les premiers ministres négocièrent pendant dix-neuf heures consécutives pour en arriver à une entente finale sur la formulation légale de l'Accord Meech. Selon un proche collaborateur de Robert Bourassa:

"Vous ne pouvez imaginer comment Peterson a été dur, très dur, cette journée du 2 juin..." Le 30 avril, le dirigeant ontarien a été un de ceux qui a parlé le plus favorablement pour le retour du Québec dans la "famille" canadienne. Le 2 juin, il revenait sur les concessions faites un mois plus tôt. L'intervention fracassante de Pierre Trudeau dans le débat a suscité des remous dans l'opinion publique ontarienne et le chef libéral a dû en tenir compte.

Dans les trois ans qui suivirent, Pierre Trudeau fit quelques autres interventions politiques remarquées sur l'Accord. Le 30 mars 1988, témoignant devant le comité du Sénat sur l'Accord, il s'attaqua de nouveau à Brian Mulroney, l'accusant d'avoir concédé des pouvoirs énormes aux provinces pour acheter une paix temporaire dans les relations fédérales-provinciales. Il recommanda au Sénat de bloquer l'Accord en l'amendant, ce qu'il fit le 21 avril 1988. Neuf amendements furent proposés, notamment la subordination explicite de la clause de "société distincte" à la Charte des droits. Le 22 juin, la Chambre des communes fut donc obligée de ratifier de nouveau l'Accord, afin de faire échec aux amendements proposés par le Sénat. Lentement mais sûrement, le doute s'installait et la position des opposants se renforçait.

La campagne de Pierre Trudeau contre le lac Meech fut également l'occasion pour le lancement de deux livres. *Le Lac Meech — Trudeau parle*, publié en 1989, reprenait plusieurs vieux textes de l'ancien premier ministre, mais l'attaque contre l'Accord se poursuivait, surtout dans le chapitre final. En 1990, quelques mois avant l'échéance il lançait avec Thomas Axworthy *Les années*

Trudeau<sup>10</sup>, dans lequel, avec l'aide d'une douzaine de fidèles de l'époque, notamment Gérard Pelletier, Marc Lalonde, Jacques Hébert, Lloyd Axworthy et John Roberts, il dressait un bilan auto-satisfait et grossièrement partisan de son règne. La contribution de Jean Chrétien sur le rapatriement de la Constitution constitue une pitoyable justification d'un des épisodes les plus saugrenus de l'histoire politique canadienne. Se défendant de vouloir s'impliquer dans le débat sur Meech, Pierre Trudeau entreprenait néanmoins une tournée pancanadienne où il parla principalement... de Meech, comme s'il aurait pu en être autrement dans les circonstances.

L'ancien premier ministre s'est également impliqué dans la course au leadership du P.L.C. Après avoir tenté de convaincre Marc Lalonde, "son plus brillant dauphin", il se rabattait finalement sur Jean Chrétien. Il avertissait cependant ce dernier que ses critiques du lac Meech étaient trop modérées, et lui faisait savoir, en guise d'avertissement, que son appui n'était pas inconditionnel<sup>11</sup>. Tout au long du débat, Pierre Trudeau ne rata pas une occasion pour rassurer le Canada anglais en lui disant que la menace d'indépendance advenant le rejet de l'Accord n'était qu'une "fumisterie"<sup>12</sup>.

Après l'échec de la tentative de faire avorter le lac Meech au niveau fédéral, il devenait évident que la bataille allait se livrer dans les législatures provinciales. Pierre Trudeau prodigua généreusement ses conseils à Sharon Carstairs du Manitoba, Frank McKenna du Nouveau-Brunswick et surtout Clyde Wells de Terre-Neuve. Multipliant les coups de téléphone, les conseils informels et les consultations par personnes interposées, il a fourni à ces gens les arguments et les idées pour enrober leur opposition à Meech. Plus souvent qu'autrement, les discours de Clyde Wells se lisaient comme de simples copies des déclarations de Trudeau. De même, avant de prononcer son premier discours d'importance sur la question pendant la course au leadership, Jean Chrétien est allé chercher le *nihil obstat* de son ancien patron. Le 22 juin 1990, à Calgary, Pierre Trudeau savourait son triomphe par de frénétiques accolades avec Clyde Wells et Jean Chrétien. Dans un bref discours devant les autochtones, il laissait aller un vibrant "I love you", remerciant les chefs des premières nations d'avoir sauvé le Canada en coulant Meech.

Si Pierre Trudeau a été le détonateur idéologique dans l'échec du lac Meech, sur le terrain c'est Jean Chrétien qui aura été, dans le sens fort du terme, le véritable fossoyeur de l'Accord. Pourtant, au lendemain de la réunion des premiers ministres en avril 1987, il s'était dit "très heureux" pour son ami Robert Bourassa. L'effondrement du lac Meech a été causé par la rupture d'une double unanimité: celle du Parti libéral du Canada et celle des Québécois fédéralistes. Même si le P.L.C. a appuyé l'Accord, l'opposition de l'"aile Chrétien" aura servi de caution à la défection de plusieurs éléments du Parti. Selon la plupart des observateurs au Manitoba, c'est l'acharnement de la chef libérale, Sharon Carstairs, une disciple de Jean Chrétien que celui-ci a active-

ment appuyée lors de l'élection provinciale de 1988, qui a porté un coup mortel à l'Accord dans cette province. De même, en brisant l'unité du Québec fédéraliste, le tandem Trudeau/Chrétien a légitimé la volte-face d'une bonne partie du Canada anglais face à la parole donnée en juin 1987. Il est tout à fait improbable, voire même impensable, que Clyde Wells ou Frank McKenna, deux premiers ministres provinciaux libéraux, eurent rejeté l'Accord si l'unanimité avait prévalu, tant au sein du P.L.C. que du Québec fédéraliste.

La campagne au leadership de Jean Chrétien aura été l'occasion non seulement de capitaliser sur l'opposition à Meech au Canada anglais en empochant des délégués, mais aussi de la cautionner et de l'attiser. Comme Trudeau, il a tout fait pour rassurer sur les conséquences du rejet de l'Accord, et pour accréditer la thèse que le Québec "bluffait". Parmi les métaphores insipides qu'il a servies, la meilleure a sans doute été celle où il comparait les problèmes constitutionnels canadiens à une auto prise dans la neige; il suffirait, pour sortir de l'ornière, de mouvements d'avant et de recul... Et, "si on ne règle pas le 23 juin, on réglera l'année prochaine"<sup>13</sup>. Selon Ralph Surette, journaliste acadien de la Nouvelle-Écosse, l'opposition des provinces de l'Atlantique à l'Accord et le remarquable sang-froid de Clyde Wells s'expliquaient par le fait que, dans les couches libérales, on était confiant que Jean Chrétien pourrait livrer ce qu'il promettait: rétablir la présence fédérale au Québec et empêcher les Québécois d'opter pour la souveraineté<sup>14</sup>. Le disciple de Pierre Trudeau apportait, d'après Lysiane Gagnon, un argument de poids aux adversaires de Meech:

Dans son accent "pea soup", il jurait ses grands dieux que les Québécois ne bougeraient pas si Meech tombait à l'eau, et que si le Québec éprouvait, en réaction, quelque velléité souverainiste, il saurait, lui, le ramener à la raison. La preuve: c'était lui qui ramassait la majorité des délégués au Québec<sup>15</sup>.

A plusieurs niveaux, donc, la course à la chefferie n'aura été qu'un "remake" de mauvais goût de l'ascension de Pierre Trudeau à la fin des années 60. Au Canada anglais, il se mettait de l'avant comme police d'assurance contre toute volonté québécoise d'accroître un tant soi peu sa marge de manoeuvre, même à l'intérieur du cadre fédéral. Au Québec, Jean Chrétien se faisait beaucoup plus nuancé, ne manquant jamais de rappeler qu'il avait toujours appuyé les cinq conditions du Québec...

Dans les derniers mois et surtout les dernières semaines avant le délai ultime, assuré de l'appui d'une forte majorité de délégués dans la course au leadership, et après avoir mesuré la gravité de la situation, Jean Chrétien entreprenait de réviser sa stratégie. Il était devenu apparent, même pour lui, que l'échec de Meech aurait des conséquences fâcheuses pour les partisans de l'unité nationale, et qu'on ne pourrait, contrairement à ce qu'il avait toujours prétendu jusque là, se contenter de tout recommencer à zéro. Pris de panique, il se voyait déjà négocier, au nom du Canada anglais, la souveraineté du Québec, ou peut-être, tout simplement, tenter de convaincre les provinces anglophones de

les représenter dans de telles négociations. Bref, un très gros banc de neige en perspective.

Même s'il avait toujours affirmé que l'Accord devait être rejeté et qu'un accord parallèle ne pouvait répondre à ses objections, Jean Chrétien a travaillé activement et directement sur le contenu du rapport Charest, dont il endossa, avec l'ensemble de la députation libérale, les recommandations. Plus tard, il se montrait prêt à accepter — pas en public, bien entendu — qu'aucun amendement ne vienne explicitement subordonner la "société distincte" à la Charte des droits. A l'occasion du marathon final à Ottawa, tout en s'enfermant dans le mutisme le plus complet, et tout en disparaissant littéralement de la scène publique, il travailla d'arrache-pied, avec l'aide de ses conseillers, qu'on a surpris plusieurs fois à longer les corridors de la conférence, à faire plier Sharon Carstairs et Clyde Wells. Ses efforts passèrent d'ailleurs à un cheveu d'être récompensés. Pour le peuple québécois, l'opposition à Meech, les pseudo volte-face, et l'opportunisme de Jean Chrétien furent perçus au mieux comme méprisants, et au pire comme une trahison. Au Canada anglais, jusque là enclin à voir "le petit gars de Shawinigan" comme un sauveur, le doute commença à s'installer... Même le prestigieux magazine *Saturday Night*, qui affiche régulièrement sa nostalgie pour Pierre Trudeau, se posa des questions sérieuses en juin 1990 sur la substance d'un homme qui, sans ses conseillers et laissé à ses propres moyens, est généralement mal informé et peu inspirant.

## LES PROVINCES RÉCALCITRANTES

Si on avait voulu provoquer délibérément l'échec de l'Accord, on n'aurait pu faire mieux que de suggérer un processus de ratification de trois ans... Pendant ces longues années, une opinion publique canadienne d'abord indifférente devenait carrément hostile. Après l'échec cuisant du P.L.C. et du N.P.D. au Québec à l'élection fédérale de 1988, et les accusations de trahison qu'on a lancées au Québec parce qu'il avait appuyé le libre-échange, la belle unanimité des partis fédéraux en faveur du lac Meech se brisait. L'opportunisme électoral cédait rapidement la place aux véritables convictions du N.P.D. et du P.L.C. Le N.P.D. confirmait sa volte-face au congrès au leadership en décembre 1989 en élisant Audrey McLaughlin, fermement opposée au lac Meech. Au P.L.C., la fronde contre l'Accord ne se terminait officiellement que le 23 juin 1990 avec l'élection de Jean Chrétien, qui remplaçait un John Turner qui avait été un fidèle supporter jusqu'à la toute fin. On assistait aussi durant cette interminable veillée funèbre à trois élections provinciales, et au rejet de l'Accord par les trois nouveaux élus.

Élu le 13 octobre 1987 sur une plateforme anti-Meech, le sympathique et fort ambitieux Frank McKenna déclenchait le bal. C'est lui auquel est revenu le douteux honneur d'établir le précédent qu'un premier ministre nouvellement



élu pouvait revenir sur la parole et la signature de son prédécesseur. Frank McKenna exigea des amendements importants à Meech, y compris l'assurance que l'aide fédérale aux provinces défavorisées ne serait pas touchée, une reconnaissance constitutionnelle du bilinguisme au Nouveau-Brunswick, un rôle de promotion de la dualité canadienne par le gouvernement fédéral, et certaines garanties constitutionnelles pour les femmes et les autochtones.

Quelques mois avant l'échéance, le premier ministre du Nouveau-Brunswick se rendit compte que, contrairement aux certitudes exprimées par le tandem Trudeau/Chrétien, l'échec de Meech risquait de provoquer la dislocation du Canada, en comparaison de quoi ses demandes lui sont apparues secondaires. Il constata également que la boîte de Pandore qu'il avait ouverte avait permis à de nombreux extrémistes anti-francophones et anti-québécois de se faire valoir sur la place publique. Frank McKenna décida alors de participer activement à l'opération de sauvetage téléguidée par le gouvernement fédéral. Il accepta de déposer à la législature du Nouveau-Brunswick une "résolution d'accompagnement", qui devait explorer les bases d'un compromis éventuel. Cette résolution, ou plutôt la démarche proposée, devait être entérinée rapidement par Brian Mulroney, et servir de toile de fond au rapport Charest. Enfin, Frank McKenna fut le premier à quitter le clan des provinces dissidentes, en faisant adopter, peu avant l'échéance, l'Accord par sa législature, même s'il n'avait pas obtenu l'essentiel des amendements qu'il recherchait.

Le columnist Jeffrey Simpson du *Globe and Mail* résuma en ces termes la tragique saga personnelle du premier ministre du Nouveau-Brunswick:

M. McKenna a fait une erreur catastrophique, et il le sait. La sagesse lui est venue tard, beaucoup trop tard, et quand il s'est rendu compte qu'il avait contribué à amorcer un processus de désintégration nationale, il fut attristé... A un moment donné, au cours du débat sur Meech, M. McKenna a paniqué. Il a aperçu les démons de la désunion se propager à travers le pays, créant une situation beaucoup plus difficile pour le Canada, et pour le Nouveau-Brunswick avec ses deux communautés linguistiques fortes, que tout ce qui pouvait résulter du lac Meech.... C'est une erreur qui tourmentera M. McKenna, un homme généreux et maintenant beaucoup plus sage, pour le reste de sa carrière politique<sup>16</sup>.

Le 26 avril 1988, le conservateur Gary Filmon prenait le pouvoir au Manitoba, à la tête d'un gouvernement minoritaire. Le N.P.D., dont le chef Howard Pawley avait appuyé l'Accord en tant que premier ministre et avait démissionné avant l'élection, se retrouvait en troisième place, derrière le Parti libéral de Sharon Carstairs. Gary Doer, nouveau chef du N.P.D. et Sharon Carstairs, encouragés par une opinion publique manitobaine fortement défavorable à l'Accord, et aiguillonnés par l'opposition grandissante du P.L.C. et du N.P.D. national, rejetaient catégoriquement Meech. Minoritaire, le premier ministre Filmon cherchait un prétexte afin de ne pas déposer l'Accord pour ratification à la législature manitobaine.

L'occasion lui fut fournie lorsque le gouvernement du Québec décida de se soustraire au jugement de la Cour suprême sur la langue d'affichage en invoquant la clause "nonobstant". Le lendemain, soit le 19 décembre 1988, la résolution d'appui à Meech fut retirée de l'agenda législatif manitobain. Gary Filmon condamna la loi 178 comme contraire à "l'esprit du lac Meech". Parce que le Manitoba constituait la province canadienne qui, historiquement, s'était opposée le plus constamment et le plus efficacement aux droits de sa minorité francophone, sa sollicitude pour la minorité anglophone opprimée du Québec laissait songeur. On aurait souhaité, pour maintenir les formes et le décorum, un prétexte plus crédible. Même l'éditorialiste du *Winnipeg Free Press* affirmait que la loi 178 n'était qu'une excuse, et que la véritable raison du retrait de l'Accord était l'opposition grandissante de la population manitobaine<sup>17</sup>. L'éditorialiste suggérait également que Gary Filmon aurait de la difficulté à convaincre les francophones qu'il était un ardent défenseur des droits linguistiques des minorités, alors qu'il avait combattu un élargissement de ces droits au Manitoba en 1983-1984.

De même, dans l'ensemble du Canada, l'adoption de la loi 178 aura permis à plusieurs opposants à Meech de maquiller et de camoufler leur rejet du Québec en prétextant la noble cause des droits individuels. On aurait pu accueillir cette argumentation avec une certaine sympathie si elle n'avait été, la plupart du temps, l'apanage des éléments les plus anti-québécois et anti-francophones de la société canadienne. En outre, comme l'affirmait l'ancien haut fonctionnaire fédéral Gordon Robertson, "la loi 178 n'est pas une juste mesure des droits dont jouit la population anglophone du Québec. Ces droits sont aujourd'hui beaucoup plus considérables que les droits des minorités francophones dans n'importe quelle province"<sup>18</sup>. Il ajoutait que les événements de Sault Ste-Marie et Thunder Bay étaient sans doute liés de façon confuse à la loi 178, mais que le ressentiment dans ces villes découlait avant tout d'inquiétudes financières et de préjugés anti-francophones.

Au Manitoba, la décision du gouvernement fédéral en 1986 de confier le contrat d'entretien des CF-18 à Bombardier (Canadair), malgré la recommandation d'un groupe de travail à Ottawa en faveur de Bristol Aerospace de Winnipeg, aura également servi à alimenter l'amertume à l'égard du Québec et du gouvernement fédéral. Bien que difficile à mesurer, l'impact sur Meech aura sans doute été considérable.

Le 3 mars 1989, Gary Filmon annonçait la création d'un comité tripartite de sept membres avec mandat de convoquer des audiences publiques sur l'Accord à travers la province. Les audiences se sont tenues entre le 6 avril et le 2 mai, et plus de 300 personnes ont été entendues. Trois intervenants sur quatre s'opposaient à la ratification. De nombreuses interventions révélaient un fort ressentiment à l'égard du Canada central et des francophones. Les recommandations du Groupe de travail s'attaquaient à la substance même de

l'Accord, et les cinq conditions du Québec étaient à divers degrés jugées inacceptables. Il ne saurait donc être question d'un accord parallèle. Il fallait réouvrir l'entente, et introduire des amendements et des modifications majeures. Parmi les propositions du groupe de travail, notons: le rejet de toute restriction sur le pouvoir fédéral de dépenser, le refus de l'unanimité pour les modifications constitutionnelles touchant le Sénat et la création de nouvelles provinces, une "clause Canada" incluant dans les caractéristiques fondamentales l'existence des peuples autochtones, le multiculturalisme, le rôle du Parlement fédéral de "sauvegarder" les caractéristiques fondamentales du Canada, et "l'existence du Canada en tant qu'État fédéral jouissant d'une identité nationale distincte", et la primauté absolue de la Charte canadienne des droits et libertés sur la société distincte au Québec.

L'opération "tordage de bras" de Brian Mulroney et de la machine fédérale, la crise économique appréhendée, les craintes quant à l'unité nationale et les pressions tardives de Jean Chrétien finiront par briser la résistance des trois partis manitobains, qui s'engagent, avec une absence notoire de volonté et d'enthousiasme, à faire ratifier l'Accord. Pour plusieurs, les manoeuvres d'Elijah Harper seront accueillies comme une véritable bénédiction, qui permettront d'obtenir le résultat souhaité sur le dos des autochtones, et surtout sans être obligé d'en assumer les responsabilités.

Le 20 avril 1989, c'était au tour du libéral Clyde Wells de prendre le pouvoir à Terre-Neuve. Quelques heures après son élection, il se déchaînait lui aussi contre l'Accord. Il prétendait notamment qu'il conférerait un statut spécial au Québec, qu'il rendait la réforme du Sénat à peu près impossible, et qu'il affaiblissait les pouvoirs du gouvernement fédéral.

Clyde Wells, tout comme Pierre Trudeau, a grossièrement surestimé le caractère décentralisateur de l'Accord. En tant que premier ministre d'une province défavorisée, il était normal qu'il se préoccupe de la capacité du gouvernement fédéral de continuer à effectuer des paiements de transfert. Cependant, en participant à l'échec, tout comme Gary Filmon et Frank McKenna, eux aussi au nom de provinces moins fortunées, le premier ministre de Terre-Neuve aura ouvert la porte à une remise en question de la confédération canadienne beaucoup plus fondamentale que celle du lac Meech. Sa province serait en effet une des grandes perdantes d'une éventuelle souveraineté du Québec.

Clyde Wells aura aussi canalisé et attisé les sentiments anti-francophones, anti-bilinguismes et anti-québécois à travers le pays. C'est ce qu'a confirmé de façon éclatante un sondage *Globe and Mail* — CBC publié le 9 juillet 1990. Ainsi, selon George Perlin, professeur de science politique à l'Université Queen's et conseiller de la maison de sondage Canadian Facts:

Une partie de l'appui à Clyde Wells vient des gens qui partagent ses critiques sur le fond de l'Accord du lac Meech, mais la plupart de ses appuis viennent des gens qui ont adopté des prises de position anti-francophones<sup>19</sup>.

Ainsi, plus que les autres Canadiens même si Clyde Wells s'est dissocié des groupes radicaux comme l'APEC, ses sympathisants étaient peu sympathiques aux aspirations du Québec, s'opposaient à toute forme de protection de la langue française à l'intérieur et à l'extérieur du Québec, et approuvaient l'attitude de villes comme Sault Ste-Marie et Thunder Bay dans leur unilinguisme anglais. Pendant tout le débat, le premier ministre de Terre-Neuve fera preuve d'une incompréhension notoire à l'égard du Québec. Ses actes de foi en faveur du bilinguisme pancanadien ne résistent pas à l'analyse. La minorité francophone de Terre-Neuve se retrouve en effet dans une situation catastrophique, et il a fallu une décision de la Cour pour ouvrir une première école française à St-Jean en 1989.

Si Clyde Wells a eu le "courage" d'aller jusqu'au bout dans la saga Meech, c'est parce qu'il se savait fort de l'appui de la majorité des Canadiens, et qu'il était cautionné par les "Canadiens français" Trudeau et Chrétien. Après la défaite de Meech, il était considéré partout au Canada (sauf au Québec) comme l'homme politique le plus populaire, et celui qui avait offert la meilleure performance pendant le débat. Sa "cote" était dix fois plus élevée que celle de Brian Mulroney, et beaucoup meilleure que celle de David Peterson<sup>20</sup>. Les thèmes du discours de Clyde Wells reflétaient fidèlement les préoccupations du Canada anglais; ils rejoignaient aussi celles de Pierre Trudeau, notamment au niveau du maintien d'un gouvernement fédéral centralisateur et d'une identité nationale forte.

Pour obtenir l'échec de Meech, Pierre Trudeau et Jean Chrétien auront été les alliés objectifs des forces les plus réactionnaires et les plus anti-francophones du pays. L'Histoire les jugera sévèrement. En ce sens, les embrassades triomphalistes de Wells, Trudeau et Chrétien, auront été profondément indécentes.

L'ultime retraite fermée à Ottawa, où il aura été "bulldozé" par le fédéral et abandonné par le Manitoba, aura passé bien prêt de venir à bout de l'irréductible Wells. Isolé, ébranlé, mais toujours convaincu que le rejet de l'Accord n'aurait pas les impacts prédits sur l'économie et l'unité nationale, il a néanmoins accepté, de fort mauvaise grâce, de mettre son opposition en veilleuse et de soumettre Meech à sa législature. De retour chez lui, l'épisode Harper au Manitoba sera le prétexte inespéré pour éviter de tenir un vote à la législature terre-neuvienne.

## QUELQUES AUTRES PRÉTEXTES...

Certains tenteront de mettre sur les failles stratégiques de Brian Mulroney l'ultime responsabilité de l'échec de l'Accord. Or, même s'il ne fait aucun doute que des erreurs de jugement ont été commises, notamment la date trop tardive de la réunion des premiers ministres à Ottawa, et les fanfaronnades de Brian Mulroney quant à son "coup de dés", il est difficile d'imaginer des stratégies qui auraient permis qu'une telle opération soit menée à bien en dépit de l'opposition massive du Canada anglais. En fait, en obtenant que le Québec se contente de si peu pour "réintégrer" la Constitution, en réussissant à convaincre au départ toutes les provinces canadiennes d'accepter l'Accord, et finalement en "forçant" un ultime consensus (si on fait abstraction de la signature conditionnelle de Clyde Wells) dans les derniers jours à Ottawa, on peut même sans doute prétendre que Brian Mulroney a fort bien joué ses cartes.

Du point de vue de l'unité nationale et de l'échec de Meech, les plus grossières erreurs ont été commises par tous ceux qui ont compris trop tard les conséquences du rejet. Parmi ceux-ci, on pouvait inclure notamment certains porte-parole des minorités linguistiques, le premier ministre Frank McKenna du Nouveau-Brunswick qui a été un détonateur dans l'opposition des provinces, et Jean Chrétien dont l'opération sauvetage aura été trop tardive et trop "nuancée".

Les critiques sur le caractère anti-démocratique de la démarche n'étaient qu'un prétexte de plus, même si, pour ma part, je suis convaincu que tout changement constitutionnel significatif devrait être soumis à la population par référendum. L'Accord de juin 1987 avait été discuté pendant un an avant d'être adopté par les premiers ministres. Il avait ensuite été soumis à l'adoption de toutes les législatures sur une période de trois ans. Rien n'empêchait des audiences publiques et des commissions parlementaires dans toutes les provinces. Techniquement, l'échec de l'Accord avait été obtenu suite à l'opposition d'un seul député et, selon les interprétations, d'une seule législature. C'est sans doute un témoignage éloquent sur le caractère relativement démocratique de l'entreprise....

En comparaison, le processus d'amendement initié par Pierre Trudeau en 1981 était beaucoup plus autoritaire. Des changements majeurs ont été apportés à la Constitution sans consultation populaire, sans élection générale et sans référendum, et malgré l'opposition fortement majoritaire des deux partis à l'Assemblée nationale du Québec. La profonde hypocrisie de ceux qui se sont scandalisés du processus tient au fait qu'il s'agit des mêmes individus qui ont applaudi l'opération de 1981-1982...

## UN NOUVEAU CANADA ANGLAIS?

Au-delà des individus, des groupes et des partis qui ont contribué à l'échec de Meech, et au-delà des prétextes qu'on aura utilisés pour justifier les oppositions, le naufrage de l'Accord s'explique fondamentalement par l'émergence au Canada anglais d'une vision du pays largement incompatible avec celle prônée par le Québec depuis plusieurs décennies. Même avec l'adoption de Meech, une remise en question des rapports entre le Québec et le Canada n'aurait été qu'une question de temps.

Est-il nécessaire de rappeler que l'opposition à Meech ne s'est jamais limitée, contrairement à ce qu'on a souvent essayé de nous faire croire, à quelques politiciens ou provinces marginales? Sondages après sondages ont démontré que l'opposition au Canada anglais s'est avérée beaucoup plus profonde. Selon une enquête Angus Reid effectuée au début d'avril 1990, 59% de la population canadienne s'opposait au Lac Meech, et seulement 24% l'approuvait<sup>21</sup>. Si on exclut le Québec, seule province où l'Accord comptait plus de partisans que d'adversaires, le rejet était d'autant plus clair. Ainsi, dans les autres régions du pays, les répondants au sondage disaient désapprouver l'Accord dans des proportions importantes: 74% en Saskatchewan et au Manitoba, 73% en Colombie-Britannique, 66% en Ontario, 65% dans les Maritimes et 64% en Alberta.

L'opposition se manifestait tant au niveau de l'*esprit* de l'Accord que de son contenu spécifique. Un sondage Gallup effectué en mars 1990 démontrait, par exemple, que 53% des Canadiens s'opposaient à ce que le Québec soit considéré comme une "société distincte", contre seulement 27% qui approuvaient ce concept<sup>22</sup>. De même, un sondage *CBC-Globe and Mail* confirmait que 82% de la population canadienne (à l'exclusion du Québec) s'opposait à ce que le Québec exerce le droit d'adopter des lois affectant la culture et la langue françaises (y compris des lois pouvant entrer en conflit avec la Charte canadienne des droits et libertés)<sup>23</sup>. On niait donc de façon claire toute prétention de primauté que pourrait entretenir le Québec quant à sa langue et sa culture.

Au-delà du travail de sape du tandem Trudeau/Chrétien, pourquoi a-t-on constaté un désaccord aussi massif au Canada anglais? A un premier niveau, on retrouvait évidemment un très fort sentiment anti-Québec et anti-francophone. Les débats sur l'Accord ont favorisé une spectaculaire sortie de placard de tout ce qui devait encore rester de vieux orangistes croyant que le bilinguisme menaçait l'anglais et serait inexorablement suivi par l'unilinguisme français à travers le pays. Encore ici, la loi 178 aura servi de prétexte à des individus et des provinces qui combattent le fait français depuis plusieurs décennies.

Même si une bonne partie de l'élite canadienne continue de préconiser le bilinguisme pancanadien comme seule solution acceptable au "problème" québécois, l'appui au bilinguisme dans l'ensemble du Canada est en voie d'effritement. En juillet 1990, une légère majorité de 51% de Canadiens désapprouvait des résolutions décrétant l'unilinguisme anglais à Sault-Ste-

Marie et à Thunder Bay<sup>24</sup>. De façon générale, on se déclarait défavorable à toute extension des politiques de bilinguisme. Selon George Perlin, professeur de science politique à l'Université Queen's, "les gens acceptent le bilinguisme en tant que principe, mais dès qu'il s'agit d'adopter des politiques concrètes en ce sens, ils se rebiffent"<sup>25</sup>. La loi fédérale sur les langues officielles suscite d'ailleurs de plus en plus de réticences au Canada. C'est pour cette raison, selon le Commissaire aux langues D'Iberville Fortier, que le gouvernement fédéral n'a pas encore eu le courage nécessaire de déposer les règlements devant donner un sens à la loi C-72 adoptée il y a de cela déjà plus de deux ans. En partie à cause de cette absence de règlements, les nouvelles dispositions de la Loi n'ont eu aucun impact dans au moins 80% des institutions fédérales<sup>26</sup>.

Mais c'est sans aucun doute dans les provinces et les villes du Canada anglais que l'opposition au bilinguisme institutionnel a été la plus farouche. Une majorité de Manitobains, par exemple, acceptèrent fort mal la décision de la Cour suprême en 1979 confirmant le bilinguisme de la législature provinciale. De même, en 1988, la Saskatchewan et l'Alberta réagirent négativement à l'imposition du bilinguisme. En février 1990, le conseil municipal de Sault-Ste-Marie en Ontario, prétendant vouloir "célébrer le multiculturalisme" en refusant d'accorder un traitement de faveur à la minorité francophone, adopta une résolution faisant de l'anglais l'unique langue officielle de la ville<sup>27</sup>.

En fait, peu de Canadiens s'identifient à l'*utopie* linguistique de Pierre Trudeau. La course au bilinguisme dans les institutions fédérales a été dans une large mesure artificielle et destinée principalement à contenir l'ardeur du nationalisme québécois. On a trop souvent tendance à oublier que Trudeau n'a gagné ses élections qu'une seule fois au Canada anglais, soit en 1968. Aux autres élections, il a toujours été minoritaire. De plus, "Trudeau a déformé le message de la Commission sur le bilinguisme et le biculturalisme"<sup>28</sup>. Au principe d'égalité des deux nations dominantes que reconnaissait pourtant clairement la Commission, Trudeau aura préféré opposer l'égalité des minorités de langues officielles ainsi que le bilinguisme.

Enfin, il ne faut pas oublier que depuis quelques années, la composition socio-démographique du Canada évolue rapidement et influence grandement les perceptions politiques. Qu'on le veuille ou non, le bilinguisme et la notion des deux peuples fondateurs ne correspondent plus à la réalité à laquelle s'identifient un grand nombre de Canadiens. Le Canada est devenu un pays multiculturel, et dans plusieurs régions, les francophones occupent une place moins importante que d'autres minorités. Ainsi, aux yeux des Canadiens anglais, les francophones du Québec ou d'ailleurs ne sont ni plus ni moins qu'un groupe ethnique parmi d'autres, nullement distinct, et certainement pas en droit de s'attendre à un traitement de faveur. Tout à fait inacceptable pour le Québec, cette position s'accroîtra pourtant inévitablement au cours des prochaines années.

Le Lac Meech aura provoqué chez de nombreux anglophones un percutant ras-le-bol par rapport aux questions constitutionnelles et aux revendications du Québec. Trudeau ne leur avait-il pas promis que la réconciliation nationale et la solution au problème du Québec passeraient par une conception du Canada basée sur la primauté fédérale dans la promotion des droits linguistiques et culturels, y compris le bilinguisme institutionnel et un meilleur sort pour les minorités francophones? De plus, du moins croyait-on à l'époque, le rapatriement de 1982 devait mater une fois pour toutes les velléités autonomistes du Québec en mettant de l'avant le genre de fédéralisme renouvelé que réclamait la grande majorité des Québécois depuis plusieurs années. En voulant écraser définitivement les "séparatistes", Pierre Trudeau a du même coup dupé le Canada anglais qui s'est retrouvé en bout de ligne avec un Accord offert au Québec en réparation pour l'échec de la réforme de 1982. Le Québec étant devenu de toute évidence "insatiable", il ne servait donc à rien de satisfaire ses aspirations, puisque de toute façon, il en redemanderait toujours...

#### LE CANADA ANGLAIS À LA RECHERCHE DE "SA" SOCIÉTÉ DISTINCTE

A un niveau beaucoup plus fondamental, une des grandes révélations du débat sur le Lac Meech, qui est passée largement inaperçue chez nous où on connaît peu et parle peu du Canada anglais, c'est l'évolution et la transformation du nationalisme canadien depuis quelques années. Pendant longtemps, nos compatriotes anglophones, pour des raisons tactiques et opportunistes, au nom du pluralisme et de la diversité, ont nié l'existence même de cette entité qu'est le Canada anglais. Tous les acteurs politiques québécois qui cherchaient à reconstruire le pays sur une base binationale se sont inexorablement butés à cet argument<sup>29</sup>.

D'ailleurs, les Québécois eux-mêmes ont souvent nié l'existence de la réalité canadienne-anglaise. Pourtant, les débats autour du Lac Meech et de l'Accord de libre-échange ont fait ressortir clairement le désir de la majorité des Canadiens de maintenir, malgré des liens économiques, géographiques, linguistiques et culturels évidents avec le reste de l'Amérique, ce qui à défaut d'être une nation dans le sens usuel du terme, demeure tout au moins une entité socio-politique distincte et différente des États-Unis. Si les valeurs communes ne sautent pas toujours aux yeux, les consensus y sont souvent minimaux, et l'hétérogénéité y est indéniable, la volonté de survivre et peut-être aussi la peur de disparaître y sont par contre incontestables.

Au-delà du rejet du Québec et des francophones, le débat du Lac Meech a été fort révélateur des priorités et des préoccupations politiques du Canada anglais. Sans jamais vouloir l'admettre, le Canada anglais a essentiellement défendu durant ces trois longues années, le *statu quo* constitutionnel. On voulait



bien sûr que le Québec continue à faire partie du Canada, mais dans le respect des structures et des règles du jeu déjà établies. Par rapport à cet objectif, les différentes demandes présentées par les provinces récalcitrantes — la réforme du Sénat, la reconnaissance constitutionnelle des droits des autochtones, la promotion des minorités, etc. — apparaissent nettement secondaires.

Le rejet de la société distincte, de tout statut particulier pour le Québec ou de toute forme de fédéralisme asymétrique, s'explique en partie par la volonté de renforcer l'identité canadienne et de préserver les pouvoirs du gouvernement fédéral. Chez les hommes politiques, Clyde Wells a sans doute mieux que quiconque su articuler cette vision qu'on pourrait qualifier de "néo-trudeauiste". Pour lui, la Charte canadienne des droits et libertés représente l'instrument de développement d'une "nation"<sup>30</sup> canadienne, de même qu'un rempart absolu pour la protection des droits et libertés individuels:

La Charte canadienne est maintenant l'élément-clé de notre Constitution autour duquel s'agencent les valeurs fondamentales qui font de nous des Canadiens et c'est un élément qu'on ne peut pas laisser s'amoinrir.<sup>31</sup>

Clyde Wells revendiquait donc la préséance absolue des droits individuels sur les droits collectifs, et conséquemment, il endossait l'abrogation de la clause nonobstant. Au Québec, par ailleurs, on a toujours mis l'emphase sur les conséquences politiques négatives de la Charte, y compris ses visées centralisatrices, ainsi que les limites qu'elle impose à la politique linguistique<sup>32</sup>.

A l'instar de la majorité des opposants de l'Accord au Canada anglais, le premier ministre de Terre-Neuve ne s'objectait pas à ce que le Québec soit reconnu comme société distincte dans le préambule de la Constitution, mais rejetait plutôt toute implication ou conséquence en termes de droits ou pouvoirs pouvant découler de ce statut. Au nom de l'égalité des provinces, il refusait au Québec tout rôle législatif particulier, ce qui, selon lui, sous-entendait nécessairement un statut *supérieur* pour les citoyens du Québec. Pourtant, monsieur Wells dramatisait inutilement la situation puisque l'Accord n'accordait aucun *nouveau* pouvoir aux provinces, ni ne consacrait d'aucune façon un quelconque statut particulier qui aurait permis au Québec de jouer "son rôle de mère-patrie de la langue et de la culture françaises au Canada"<sup>33</sup>.

C'est que pour l'ensemble des Canadiens, l'identité provinciale est nettement secondaire par rapport à l'identité canadienne. Pour Clyde Wells:

Être Canadien, ce n'est pas seulement être résident de telle ou telle province ou territoire. Nous avons un sens de la citoyenneté nationale qui dépasse nos identités provinciales... Le Canada a une identité nationale qui va plus loin que la somme de ses composantes...<sup>34</sup>

D'ailleurs, un sondage Maclean's/Decima démontrait en janvier 1990 que les Québécois étaient les seuls Canadiens (à part les Terre-Neuviens qui se sont joints à la Confédération en 1949) à s'identifier d'abord à leur province<sup>35</sup>. Le

Québec est le premier lieu de l'identification nationale des Franco-Québécois. Il n'est donc pas étonnant que de nombreux sondages aient démontré qu'une forte majorité de Québécois appuie des gouvernements provinciaux forts, tandis qu'au Canada anglais, on préfère miser sur le gouvernement central<sup>36</sup>. Plusieurs Canadiens, par ailleurs, manifestent à l'égard des gouvernements provinciaux et de leurs intérêts locaux ("parochial"<sup>37</sup>) une bonne part de mépris et de méfiance<sup>38</sup>.

Pour Clyde Wells et les nationalistes canadiens, un autre élément-clé de la "communauté nationale canadienne" est l'engagement à une redistribution et à un partage équitable des richesses entre tous les Canadiens, "en encourageant un développement économique destiné à réduire les disparités et en offrant des services publics essentiels de qualité raisonnable pour tous les Canadiens"<sup>39</sup>. Selon Wells, il ne faut donc d'aucune façon limiter la capacité d'intervention du gouvernement fédéral, seul capable d'atteindre cet objectif, même si cela implique des incursions régulières et importantes dans des champs de juridiction provinciale. Il faut croire qu'à ce niveau, l'impact du Lac Meech au Canada anglais aura été principalement psychologique. On voit mal comment l'Accord aurait pu empêcher le gouvernement fédéral de mettre de l'avant des programmes sociaux d'envergure nationale, et mener à la décentralisation et à la "balkanisation" du pays. De même, quand on s'oppose, au Canada anglais, à ce que les provinces participent à la nomination des juges de la Cour suprême et des sénateurs, parce qu'on croit que cela contribuera à la fragmentation de l'identité canadienne, on nie là l'essence même du fédéralisme.

Historiquement, le fédéralisme a été ni plus ni moins imposé aux Canadiens anglais par un Québec soucieux de protéger sa différence. De toute évidence, il est de plus en plus perçu comme une camisole de force empêchant le Canada de réaliser ses aspirations légitimes. Pour une majorité de Canadiens, le Lac Meech aurait affaibli l'identité canadienne. La vision qui émerge des critiques est celle d'un Canada qu'on veut très centralisé. Implicitement, on rejette la possibilité que la conciliation des identités multiples puisse être un facteur de cohésion plutôt que de division.

## LE TRAUMATISME DU LIBRE-ÉCHANGE

Pour les nationalistes canadiens-anglais, l'adoption d'un traité de libre-échange avec les Etats-Unis a été une expérience traumatisante. Le rejet de l'américanisation est désormais à l'ordre du jour. Plus que jamais, pour faire face au défi de la marginalisation, le Canada cherche à s'appuyer sur un Etat central fort pour se donner un minimum de cohérence et élargir la marge de manoeuvre de l'économie, de la culture et de la société canadienne. Selon le politologue Philip Resnick:

Sans cet Etat central, il ne peut y avoir de véritable nation canadienne (ou canadienne-anglaise). Depuis les quelque cent vingt-cinq ans que la Confédération existe, tous nos symboles nationaux y ont été associés. De la Gendarmerie royale aux grands projets ferroviaires, des forces armées à la radiotélédiffusion nationale, aux programmes sociaux ou au drapeau, les Canadiens anglais ont toujours progressé à l'intérieur de ce cadre. L'affaiblir ou le démanteler serait porter un coup à notre identité.<sup>40</sup>

Pour Resnick, le démantèlement du Canada résulterait précisément de l'effet combiné du libre-échange et du Lac Meech. Il ajoute que "le Canada anglais s'est forgé une identité basée sur une forte identification avec les institutions du gouvernement fédéral". Dans le domaine culturel, par exemple, on a créé la CBC, l'ONF et le Conseil national des arts, en bonne partie pour résister à l'influence américaine.

Si une partie du Canada anglais a rejeté le Lac Meech à cause de son caractère potentiellement décentralisateur, il s'est opposé à l'Accord de libre-échange parce qu'il renforçait l'instance continentale au détriment du niveau national ou fédéral. Dans les deux cas, on a considéré que les pouvoirs du gouvernement fédéral qui étaient perçus comme fondamentaux pour l'avenir du Canada étaient menacés.

En effet, pour un grand nombre de Canadiens anglais, la signature de l'Accord de libre-échange a constitué un véritable traumatisme. Avec raison, on a acquis la conviction que l'intégration économique continentale croissante aurait inévitablement des conséquences importantes sur l'autonomie économique, politique et culturelle du pays.

Au niveau économique, on voit mal comment on pourrait éviter, à moyen ou long terme, que les politiques fiscales et monétaires s'harmonisent encore plus qu'aujourd'hui. Des fluctuations importantes dans la valeur de la devise canadienne par rapport au dollar américain déstabiliseraient l'environnement économique en n'offrant peu de garanties à long terme pour la rentabilité des investissements de part et d'autre. De même, la fiscalité canadienne devra dans une large mesure s'ajuster à la fiscalité américaine, sans quoi les entreprises situées au Canada seront tentées d'aller s'implanter aux Etats-Unis. Enfin, plusieurs programmes gouvernementaux qui créent des distorsions dans la libre circulation des biens et des capitaux, y compris les politiques d'achat, le soutien au développement régional, le financement de l'innovation et de la R-D, les offices de mise en marchés et les initiatives de plusieurs sociétés d'Etat, risquent d'être remis en question. De façon générale, on peut facilement prévoir que la marge de manoeuvre de l'Etat, qui définit dans une large mesure les spécificités canadienne et québécoise, se retrouvera plus encadrée et plus réduite qu'aujourd'hui.

Sur le plan politique, l'harmonisation fiscale et la crise budgétaire combineront leurs effets et exerceront de fortes pressions à la baisse sur les programmes

sociaux, dont l'étendue et la "générosité" relatives sont considérées comme un élément-clé de la société distincte canadienne par rapport aux Etats-Unis. Parce que la fiscalité canadienne plus élevée constitue précisément la pierre d'assise de ces programmes, ces derniers ne pourront éviter d'être menacés dans les années à venir. La réforme de l'assurance-chômage et les remises en question du caractère exclusivement public de l'assurance-maladie sont autant d'indices révélant que le processus est déjà enclenché.

Les inquiétudes politiques du Canada anglais se comprennent d'autant plus que les justifications historiques de l'existence du Canada, c'est-à-dire la volonté de l'empire britannique de "protéger" une partie de l'Amérique du Nord contre la révolution américaine, se sont depuis longtemps estompées. En plus, les politiques canadiennes ont eu tendance, surtout dans la dernière décennie, à s'aligner davantage sur les politiques américaines. La politique étrangère canadienne, par exemple, est plus souvent qu'autrement une pâle copie de celle de Washington.

Selon de nombreux Canadiens, c'est l'intervention de l'Etat qui a rendu possible la survie du pays malgré des facteurs géographiques, démographiques et climatiques défavorables. C'est aussi l'intervention de l'Etat qui définit encore dans une large mesure l'autonomie relative du pays. A l'inverse, on est convaincu que le retrait de l'Etat de la vie économique, sociale et culturelle entraînerait la disparition du Canada à brève échéance. C'est pourquoi on redoute tant les effets du libre-échange et on est prêt à partir en croisade pour sauver les pouvoirs du gouvernement fédéral.

Au niveau culturel, les défis ne risquent pas de manquer non plus. Au Canada anglais, même si on réussit à fabriquer des produits culturels de qualité, on devra convaincre et surtout se convaincre que ceux-ci émanent d'une société véritablement distincte, basée sur des valeurs spécifiques et durables malgré l'immersion nord-américaine. On rétorquera avec raison que l'américanisation ou la mondialisation de la culture est un phénomène universel qui ne touche pas uniquement le Canada. En Europe et au Mexique, là où on retrouve des cultures nationales relativement fortes, on semble capable d'absorber les méfaits de l'américanisation tout en conservant les éléments qui font leur spécificité culturelle. Par contre, pour des cultures fragiles aux contours flous, comme au Canada anglais, le défi apparaît particulièrement costaud dans le contexte d'une imbrication économique et politique de plus en plus forte.

Dans les années 1970, le gouvernement fédéral entreprit des efforts particuliers pour lutter contre l'américanisation et pour soutenir la culture canadienne. Selon Philip Resnick:

Les années soixante-dix marquèrent la fin des exemptions fiscales dont bénéficiaient pour leur publicité les éditions canadiennes de magazines comme *Time* et le *Reader's Digest*, de même que l'adoption d'un ensemble de mesures visant à soutenir les cinéastes, les maisons d'édition et les groupes artistiques de

toute nature. Phénomène plus important encore, la littérature, le théâtre, la danse et la musique parvenaient à une certaine plénitude, à l'instar de ce qui s'était passé au Québec pendant les années soixante.<sup>41</sup>

De même, au niveau économique, on a tenté de contrer la mainmise américaine sur le secteur manufacturier et celui des ressources naturelles. La question de la propriété étrangère a été au centre de plusieurs rapports gouvernementaux (le Rapport Watkins de 1968, le Rapport Wahn de 1970, et celui du groupe de travail dirigé par Herb Gray en 1972), et a éventuellement mené à l'adoption d'une série de mesures adoptées par le gouvernement fédéral, notamment l'Agence d'examen de l'investissement étranger (FIRA) et la Corporation de développement du Canada (CDC). L'élection de Brian Mulroney et le traité de libre-échange avec les Etats-Unis devaient toutefois dans une large mesure mettre fin à ces embryons de politiques économiques nationales.

Selon Christian Dufour, l'identité canadienne-anglaise est anti-américaine dans son essence même; "si les Québécois comme collectivité en sont restés à la Conquête de 1760, le Canada anglais, lui, ne s'est jamais remis de la défaite des Loyalistes, quinze ans plus tard, aux mains des Américains"<sup>42</sup>. D'où le sentiment passablement répandu au Canada anglais que les Québécois ont trahi le Canada en appuyant le libre-échange à l'occasion de l'élection fédérale de novembre 1988. On aurait alors apparemment fait preuve d'une indifférence flagrante à l'égard de la sécurité culturelle canadienne face aux Américains<sup>43</sup>...

Pour un grand nombre de Canadiens anglais donc, un gouvernement central fort constitue l'outil principal pour faire face aux défis de l'américanisation et pour construire une identité nationale forte. De ce point de vue, la division des pouvoirs inhérente au fédéralisme canadien et la dualité peuvent effectivement constituer des obstacles au nationalisme pancanadien. Par contre, ce n'est certainement pas à nous Québécois, qui plaidons pour un Etat provincial fort depuis la Confédération et encore plus depuis la Révolution tranquille, et cela essentiellement pour les mêmes raisons, de contester la légitimité de cette revendication. Et ce, même s'il est vrai qu'à l'occasion du référendum, la plupart des premiers ministres provinciaux étaient venue parader au Québec pour nous dire que tout était possible à l'intérieur d'un fédéralisme renouvelé, y compris une décentralisation significative des pouvoirs fédéraux. De son côté, et c'est ce qui a occasionné sa perte, Brian Mulroney incarne depuis quelques années une vision plus "provincialiste" du Canada. Les forces vives du pays, y compris le Nouveau parti démocratique et le Parti libéral du Canada, prêchent maintenant pour un Etat central renforcé, capable d'endiguer la menace américaine, d'éviter le démembrement du pays, et d'assurer aux Canadiens un minimum d'autonomie. Il est tout à fait plausible, dans l'état actuel des choses, que le Québec soit davantage un boulet qu'une planche de salut dans un Canada à la recherche de sa société distincte. Selon Bela Egyed, professeur de philosophie à l'Université Carleton:

les avantages pour le Canada anglais de la séparation du Québec sont évidents... le démembrement du Canada est un danger plus sérieux que la séparation; le processus est d'ailleurs déjà engagé parce que le gouvernement fédéral est paralysé dans ses efforts pour régler les problèmes spécifiques du Canada.<sup>44</sup>

Une partie de l'opposition à Meech provient du constat, souvent confus et contradictoire, mais non moins réel, que le Canada anglais ne peut plus se contenter de s'appuyer sur le Québec pour assurer son caractère distinct. Il doit prendre les moyens pour assurer sa propre survie et sa propre identité culturelle. Pour plusieurs nationalistes canadiens-anglais, dont la célèbre romancière Margaret Atwood, le Canada peut exister sans le Québec. Pas étonnant donc que la déclaration de Jean Chrétien, pendant la campagne au leadership, à l'effet que le Canada ne survivrait pas en tant que nation et se joindrait probablement aux Etats-Unis si le Québec se séparait, ait provoqué une si forte indignation chez nos compatriotes des provinces anglaises...

#### LE CANADA DES RÉGIONS: MYTHE OU ALTERNATIVE?

Après l'échec du Lac Meech, plusieurs Canadiens et Québécois ont proposé de reconstruire le Canada sur la base de gouvernements régionaux forts associés dans une confédération décentralisée<sup>45</sup>. Cette conception s'oppose évidemment à celle d'un gouvernement central fort et semble rejoindre les préoccupations notamment du Reform Party dans l'Ouest canadien et les déclarations de Bill Vander Zalm, premier ministre de la Colombie-Britannique, en faveur d'une forme de souveraineté-association pour sa province. Qu'en est-il?

Quel que soit le statut politique que choisira de se donner le Québec dans les prochaines années, il ne fait aucun doute que la réalité régionale continuera d'exister au Canada et que les Maritimes et l'Ouest, par exemple, pourraient trouver avantage à s'unir dans des gouvernements régionaux. Il est beaucoup moins évident par contre, que les nouvelles instances régionales "remplaceraient" un gouvernement fédéral fort, ou favoriseraient une réduction des pouvoirs du gouvernement central.

Au moment de se joindre à la Confédération, les provinces maritimes étaient les colonies les plus prospères et les plus dynamiques de l'Amérique du Nord britannique. Des facteurs géographiques et économiques, ainsi qu'une politique nationale fédérale favorisant le Canada central ont provoqué le déclin de cette région. A l'heure actuelle, les provinces maritimes sont la région la plus pauvre du pays, et vivent une situation de sous-développement et de sous-industrialisation chronique. Le taux de chômage est le plus élevé au Canada, les investissements y sont faibles et on assiste à une forte migration vers le reste du Canada.

Cette situation crée évidemment un sentiment d'aliénation et de frustration à l'égard du gouvernement fédéral qu'on tient responsable du cul-de-sac actuel.

Par ailleurs, la dépendance à l'égard de la péréquation fédérale a atteint un point tel que les provinces maritimes n'ont guère de choix que de faire acte de foi envers le fédéralisme et un gouvernement central fort. Un affaiblissement du pouvoir de dépenser et de la marge de manoeuvre économique de l'Etat canadien signifierait nécessairement une diminution des paiements de transfert, y compris les prestations d'assurance-chômage, d'allocations familiales, de pensions de vieillesse, les subventions au développement régional et les fonds liés aux accords sur le partage des coûts et la péréquation. Dans le cas de Terre-Neuve, par exemple, les paiements de péréquation viennent gonfler de 33,6% les revenus du gouvernement provincial. Pas étonnant donc que Clyde Wells ait beaucoup insisté sur la nécessité de maintenir un gouvernement central fort.

C'est par contre dans l'Ouest canadien que le régionalisme s'est le plus développé dans les dernières années et qu'il constitue la menace la plus crédible à un gouvernement fédéral centralisé. Comme dans les Maritimes, le sentiment d'aliénation régionale s'appuie sur la perception que le gouvernement d'Ottawa constitue avant tout l'instrument du Canada central, et plus particulièrement du Québec. En effet, plus souvent qu'autrement, le Québec français sert de bouc-émissaire à la rancoeur de l'Ouest:

Si les rivalités régionales sont normales dans un régime fédéral, il est quand même révélateur de constater que, dans les Prairies, le Québec demeure la cible favorite, alors que l'Ontario profite objectivement davantage du fédéralisme.<sup>46</sup>

A la différence des Maritimes, cependant, les provinces de l'Ouest possèdent une base économique relativement forte sur laquelle elles pourraient asseoir leurs revendications régionales ou autonomistes. Bien pourvues en matières premières et ressources énergétiques, elles sont tournées vers le marché américain, profitent de plus en plus du nouveau dynamisme économique dans le Pacifique et seraient sans doute mieux servies au niveau économique par des relations plus directes avec les Etats-Unis. Historiquement, elles se sont appuyées sur des gouvernements provinciaux interventionnistes (notamment le CCF et le NPD), et elles ont participé à de nombreuses querelles fédérales-provinciales sur le contrôle des ressources naturelles, notamment sur la potasse (Saskatchewan) et le pétrole (Alberta). La politique énergétique nationale du gouvernement fédéral qui fixa le prix du pétrole albertain en dessous du prix international dans le but de favoriser la base industrielle du Canada central, en particulier de l'Ontario, a été perçue comme un véritable *hold-up*.

Même dans l'Ouest, cependant, le régionalisme a ses limites. D'une part, cette région est loin d'être aussi monolithique que l'on pense. Le Manitoba, par exemple, en tant que province pauvre dépourvue de richesses naturelles importantes et fortement dépendante des paiements de transferts fédéraux, continue à revendiquer un gouvernement central fort capable d'égaliser les chances

et les revenus entre les provinces. Gary Filmon a été très clair là-dessus pendant le débat sur le Lac Meech. D'autre part, du point de vue de la langue, de la culture et des valeurs en général, la population de l'Ouest s'assimile tout à fait à l'entité anglo-canadienne. D'ailleurs, les sondages démontrent clairement qu'une très forte majorité de citoyens de ces provinces s'oppose à toute annexion aux Etats-Unis, et ce, malgré l'intérêt que cela pourrait représenter au niveau économique. Enfin, au niveau politique, le régionalisme de l'Ouest constitue sans doute avant tout une manifestation de son aliénation par rapport au Canada central et de son absence de pouvoir au niveau fédéral. Les provinces de l'Ouest pourraient vivre avec un gouvernement central fort et efficace, dans la mesure où elles y obtiendraient une meilleure représentation de leurs intérêts et une amélioration du rapport de force. Ainsi,

Contrairement au Québec, l'Ouest n'a jamais sérieusement envisagé de quitter le pays; son véritable but n'est même pas l'augmentation des pouvoirs des gouvernements provinciaux. Loin de vouloir faire bande à part, cette région aspire à une intégration accrue du système. Elle demande que les politiques fédérales tiennent réellement compte de ses préoccupations... Ce que désire l'Ouest, c'est influencer le pouvoir central dans le sens de ses priorités à lui, qui sont essentiellement économiques.<sup>47</sup>

Il est probable d'ailleurs que la souveraineté du Québec provoque un rapprochement sur une base plus égalitaire entre l'Ontario et les provinces de l'Ouest.

## LE CANADA ANGLAIS FACE À LA SOUVERAINETÉ DU QUÉBEC

Je ne partage pas l'opinion qui veut que "l'effondrement du Canada anglais sera une conclusion inévitable de l'indépendance du Québec"<sup>48</sup>. A mon avis, le processus de redéfinition des structures de l'Etat canadien qui a été entamé "par la bande" pendant les débats sur Meech, donnera lieu à de longues et ardues discussions. Mais même si on est encore loin d'un consensus, le désir de survivre et de résister à l'américanisation et de s'appuyer pour ce faire sur un gouvernement fédéral relativement musclé, ne peut que déboucher sur un nouveau Canada dans les années à venir.

Encore une fois, le Québec aura été l'élément déclencheur dans ce processus. Le Canada anglais devient de plus en plus conscient de l'incompatibilité fondamentale entre sa vision du pays et celle du Québec. Cette attitude se traduit en partie par une "ouverture" plus marquée à l'égard de la souveraineté. Ainsi, selon un sondage Gallup effectué au début de juin 1990, trois Canadiens sur dix (29%) appuyaient cette option pour le Québec<sup>49</sup>. Ces chiffres sont nettement plus élevés que ceux qui ont été enregistrés par la firme Gallup avant le référendum de 1980.

Le rejet des conséquences politiques de la spécificité du Québec et du concept des deux nations comme partie intégrante du fédéralisme canadien, ne



signifie pas pour autant que le Canada anglais refuse tout nouveau *modus vivendi* avec le Québec. De plus en plus de Canadiens anglais perçoivent maintenant l'intérêt pour eux d'une redéfinition fondamentale des rapports entre le Québec et le reste du pays. Le lendemain de l'échec de Meech, le politologue Philip Resnick de la Colombie-Britannique écrivait que:

La souveraineté du Québec, à l'intérieur d'une union confédérale avec le Canada, permettrait de réconcilier le désir d'une vaste majorité de Canadiens anglais pour "un gouvernement central raisonnablement fort", et celui des Québécois pour "un gouvernement le plus fort possible".<sup>50</sup>

L'ex-premier ministre de Terre-neuve, Brian Peckford, déclarait pour sa part que "le Québec doit maintenant devenir plus autonome politiquement tout en s'associant au reste du Canada sur le plan économique"<sup>51</sup>. Daniel Drache et Mel Watkins, deux professeurs d'université bien connus à Toronto, se prononçaient dans les pages du *Globe and Mail* pour une solution binationale avec des états séparés<sup>52</sup>.

Ultimement, le dénouement de l'interminable saga du Lac Meech signale, tant au Canada anglais qu'au Québec, un nouveau départ vers une redéfinition fondamentale — et combien nécessaire — des cadres politiques canadien et québécois.

## NOTES

1. Voir Denis ROBERT, "La signification de l'Accord du lac Meech au Canada anglais et au Québec francophone: un tour d'horizon du débat public", in Peter M. Leslie et Ronald L. Watts: *Canada: The State of the Federation 1987-88*, Institute of Intergovernmental Relations, Université Queen's, Kingston, 1988, p. 131.
2. Lysiane GAGNON, "Une sollicitude suspecte", *La Presse*, 18 août 1987.
3. Denis ROBERT, *op.cit.*, p. 133.
4. *Ibid.*, p. 139.
5. L'auteur est redevable ici à madame Josée Legault, de l'Université du Québec à Montréal, dont les recherches sur la communauté anglo-québécoise ont largement inspiré les commentaires émis sur ce sujet dans le présent article. Voir surtout, "La minorité-majorité anglo-québécoise: une réflexion théorique", à paraître à l'automne 1990, dans la revue *Égalité*.
6. *Ibid.*, p. 135.
7. *The Globe and Mail*, "Anglophones Urged to Reassure Canada", 22 janvier 1990.
8. Denis ROBERT, *op.cit.*, pp. 136-137.
9. Yvon FONTAINE, "La politique linguistique au Canada: l'impasse?", in Ronald L. Watts and Douglas M. Brown, *Canada: The State of the Federation 1989*, Institute of Intergovernmental Relations, Université Queen's, 1989, p. 146.

10. Donald JOHNSTON (sous la direction de), *Lac Meech — Trudeau parle*, Montréal, Hurtubise HMH, 1989; et Thomas Axworthy et Pierre Trudeau (sous la direction de), *Les années Trudeau*, Montréal, Éditions Le Jour, 1990.
11. Michel VASTEL, *Trudeau, le Québécois*, Montréal, Éditions de l'Homme, 1989.
12. *The Globe and Mail*, "Trudeau Decries Separation Hoax", 27 octobre 1989; et Patricia POIRIER, "Trudeau Plays Down Fears over Quebec Separation", *The Globe and Mail*, 21 mars 1990.
13. Paul ROY, "Halifax: Chrétien se sent honoré par les attaques de ses principaux adversaires", *La Presse*, 21 avril 1990.
14. Ralph SURETTE, "Meech, Chrétien et les Maritimes", *La Presse*, 17 mai 1990.
15. Lysiane GAGNON, "Où est passé Jean Chrétien?", *La Presse*, 19 juin 1990.
16. Jeffrey SIMPSON, "The Illusions of Those Canadians who Still Think Quebec is Bluffing", *The Globe and Mail*, 28 juin 1990.
17. *The Winnipeg Free Press*, "Don't Seize the Spirit", éditorial, 29 décembre 1988.
18. Gordon ROBERTSON, "The Five Myths of Meech Lake", Ottawa, avril 1990, p. 13.
19. Cité par Hugh WINDSOR, "Wells Was Lightning Rod for Anti-French Feeling, Polls Show", *The Globe and Mail*, 10 juillet 1990.
20. *Op.cit.*
21. "Le fossé s'élargit entre le Québec et le Canada", *La Presse*, 8 avril 1990.
22. *La Presse*, 8 mars 1990.
23. *The Globe and Mail*, 12 février 1990.
24. Cité dans Hugh Windsor, *op.cit.*
25. *Ibid.*
26. Chantal HÉBERT, "Ottawa retarde de nouveau sa réglementation sur les langues", *Le Devoir*, 7 avril 1990.
27. "Sault-Ste-Marie célèbre le multiculturalisme", *La Presse*, 6 février 1990.
28. Neil MORRISON, cité par Francine Pelletier, "Bilinguisme: il faut remettre les choses à leur place, à la manière de Laurendeau", *La Presse*, 25 novembre 1989. Le propos original de Morrison a été formulé originalement dans "Bilinguisme et biculturalisme". *Langue et société*, dossier spécial, été 1989, pp. D7-8.
29. Daniel LATOUCHE, *Le bazar*, Montréal, Boréal Express, 1989, p. 116.
30. Entendu dans le sens anglo-saxon du terme, soit une référence à une entité politique, voire étatique plutôt qu'ethnique.
31. Clyde WELLS, *L'Accord du lac Meech*, discours prononcé au Cercle canadien de Montréal, 9 janvier 1990, p. 5.
32. Denis ROBERT, *op.cit.*, p. 153.
33. Clyde WELLS, *op.cit.*, p. 12.
34. *Ibid.*, p. 5.
35. Carl MOLLINS, "An uncertain nation", *Maclean's*, 1er janvier 1990, p. 13.
36. Sylvia BASHEVKIN, "Solitudes in collision", *Comparative Political Studies*, hiver 1990. L'auteur y cite trois sondages effectués en 1977, 1979 et 1981.

37. Terme beaucoup plus péjoratif qui renvoie à l'esprit de clocher ou de paroisse.
38. Denis ROBERT, *op.cit.*, p. 154.
39. Clyde WELLS, *op.cit.*, p. 5.
40. Philip RESNICK et Daniel LATOUCHE, *Réponse à un ami canadien*, Montréal, Editions du Boréal, 1989, p. 29.
41. *Ibid.*, p. 56.
42. Christian DUFOUR, *Le défi québécois*, Montréal, Editions de l'Hexagone, 1989, p. 139.
43. Philip RESNICK et Daniel LATOUCHE, *op.cit.*, p. 56.
44. Bela EGYED, "Québec should separate so that the rest of Canada can unite", texte non publié, département de philosophie, Université Carleton, juin 1990, p. 12.
45. C'est le cas notamment de l'éditorialiste Alain Dubuc, du journal *La Presse*.
46. DUFOUR, *op.cit.*, p. 139.
47. *Ibid.*, p. 139.
48. Kimon VALASKAKIS, "Le Canada est menacé de divorce et le Lac Meech n'est que la pointe de l'iceberg", *La Presse*, 15 novembre 1989.
49. "Les Canadiens profondément divisés sur la question de la séparation du Québec", *La Presse*, 3 juillet 1990.
50. Philip RESNICK, "Vers une nouvelle union Canada-Québec", *Le Devoir*, 23 juin 1990.
51. Gilles GAUTHIER, "Peckford souhaite que le Québec devienne plus autonome politiquement", *La Presse*, 24 juin 1990.
52. Daniel DRACHE et Mel WATKINS, "A wholly undemocratic process", *The Globe and Mail*, 6 juin 1990.



# III

## Focus on the Issues

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## Constitutional Minoritarianism in Canada<sup>\*</sup>

*Alan C. Cairns*

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*Depuis l'adoption de la Loi constitutionnelle de 1982, moult nouveaux acteurs se sont imposés sur le plan constitutionnel, en marge des gouvernements, à la faveur de l'extension donnée à la constitution écrite. Ces groupements — femmes, autochtones, minorités visibles, minorités linguistiques francophone et anglophone, handicapés, etc. — partagent une même vision du monde qu'on pourrait qualifier de "minoritarisme". Ainsi, leur credo constitutionnel s'articule autour de l'affirmation de leurs droits constitutionnels et de l'idée qu'ils constituent les laissés-pour-compte de la société.*

*Il faut envisager d'accorder des prérogatives constitutionnelles à ces nouveaux acteurs, au même titre qu'aux gouvernements, à la faveur d'une modification à la formule d'amendement. Cela impliquera, au préalable, que l'on reconsidère de manière radicale notre conception traditionnelle en matière de représentativité. Ces groupes minoritaires croient être les mieux placés pour représenter leurs propres intérêts; c'est pourquoi ils sont peu enclins à endosser le principe de la majorité, à la base du gouvernement responsable. Récusant l'hégémonie du discours constitutionnel fondé sur le fédéralisme et le gouvernement parlementaire, ils opposent en revanche leur credo promouvant les revendications, qui des femmes, qui des autochtones, etc. Ces groupes minoritaires trouvent inacceptable le rôle prépondérant occupé par les gouvernements dans le cadre des processus formel et informel de modification constitutionnelle. Somme toute, nombre de ces acteurs minoritaires, défiants et contre-culturels par nature, semblent présentement déterminés à voir leurs revendications constitutionnalisées. Du coup, c'est toute la valeur référentielle des théories et usages constitutionnels qui apparaît remise en cause.*

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Ultimately, that which either holds society together or takes it apart is sentiment, and the chief instrument with which such sentiment may be aroused, manipulated, and rendered dormant is discourse.<sup>1</sup>

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<sup>\*</sup>The J.A. Corry Lecture delivered at Queen's University, 6 March 1990.

When someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibrium, as if you looked into a mirror and saw nothing.<sup>2</sup>

## INTRODUCTION

I thank Queen's University for the opportunity to deliver the annual Corry lecture. Professor James Alexander Corry bridged law and political science in a long and productive scholarly career. He was an adviser to governments. Indeed, he was one of the key academics who, in the 1930s, left their intellectual imprint on one of the great state documents in Canadian history, the Rowell-Sirois Report. In a broader and more diffuse sense, he was ever conscious of the public obligation of the scholar to educate the citizenry whose taxes supported the privileged life of thought and research from which he benefited. J.A. Corry was also a devoted citizen of the academic community, and in particular of this university which he served as Principal for many years.

From a political science perspective, he was one of the "founders," a member of that small group — it numbered only about thirty after World War II — who extricated political science from its colonial beginnings as an offshoot of British academic life, and who simultaneously worked to establish its autonomy and separate identity from Economics with which it was often linked in universities. In his roles as scholar, administrator, and citizen he was, as he reminds us in his autobiography<sup>3</sup>, a happy warrior, one whose life and work were harmoniously blended.

For all of these reasons, I am honoured to give this lecture. Such named lectures are the vehicles by which we pay tribute to our illustrious predecessors. We employ ceremony and occasion in the service of the scholarly vocation that always needs bolstering against the market's narrow conceptions of utility.

## THE FRAGMENTATION OF CONSTITUTIONAL DISCOURSE

The subject of my lecture is constitutional minoritarianism, the basic constitutional world view held by the various groups that were explicitly brought into the constitution in 1982. Although my list could be extended, I will confine myself primarily to women, the disabled, aboriginals, official language minorities, and third force ethnic Canadians and visible minorities who lack founding people status.

These are the new actors on the constitutional stage who received some kind of recognition in 1982. They do not exhaust the category "minority," which also includes political scientists, left-handers, trade unionists, gays or lesbians, and many others. Although these latter groups may have views on and talk about the constitution, they lack the compelling focus of attention that explicit

inclusion in the constitution provides, for example, to women and aboriginals. The minorities on which I am focusing, especially their elites, now see themselves as part of the constitution. They see their fate as affected by the evolving meaning attached to particular constitutional clauses. They monitor the developing judicial interpretation of their clauses. They fear that constitutional reform processes that exclude them will rearrange the constitutional order in a manner detrimental to their interests. In sum, their particular constitutional concerns generate a higher profile for the constitution in their lives than is the case for the general citizen body.

Explicit constitutional status elicits constitutional introspection and an elaboration of the group's constitutional interests. The inclusion of section 27 in the Charter, with its reference to the multicultural heritage of Canadians, inevitably generates a specific debate on the relevance of ethnicity for how we treat each other in the public domain, and how we view ourselves as a people. Section 28, which guarantees the Charter's rights and freedoms "equally to male and female persons," in conjunction with the section 15 inclusion of "sex" as one of the categories not to be used to discriminate against individuals, gives to the male-female cleavage a constitutional dimension that it formerly lacked. Consequently, there is now a constitutional discourse organized around gender, along with an ethnic constitutional discourse stimulated by section 27, both of which join the well-developed historic constitutional languages of federalism and parliamentary government.

It now makes sense, accordingly, in a way that it formerly did not, to think of the constitution as the home of a variety of constitutional discourses, many of which were triggered into existence by the constitutional changes of 1982. There is also an aboriginal discourse, internally differentiated into sub-discourses separately responding to the distinct concerns of the Inuit, Métis, status and non-status Indians. This shades into the more encompassing ethnic constitutional discourse that debates the proper relationship and status differentiation between "third force" Canadians, visible minorities, and the French-English and aboriginal founding peoples.<sup>4</sup> Another discourse deals with the language rights of the two official linguistic communities, further broken down by the crucial distinction between minority and majority situations for each language group. Yet another constitutional discourse addresses the significance to be attached to the presence or absence of mental or physical disabilities — although this constitutional orientation is not yet strongly developed.

This multiplication of constitutional vantage points underlines the new role of the constitution in Canadian society. It now plays a symbolic role in discriminatingly fine-tuning the relative status to be derived from such basic personal attributes as race, ethnicity, gender and language in contemporary Canada. Their salience is heightened by their incorporation into a rights award-

ing charter. The citizenry's possession of rights transforms the relation between the governors and the governed, most importantly by reducing the deference accorded the former by the latter. Relatedly, as Robert Vipond recently argued, and as the Meech Lake drama convincingly confirmed, the coexistence in the same constitution of a Charter that accords rights to citizens and an amending formula that presupposes the leading role of governments in formal constitutional change puts the issue of sovereignty directly on the Canadian constitutional agenda.<sup>5</sup>

Challenging and stimulating as it might be to grapple with all of these phenomena in one lecture, the risks of failure, superficiality or both would be inordinately high. Instead I will portray certain common characteristics of the constitutional orientations of these fledgling constitutional actors. Indeed, my ambition is anthropological — to enter sympathetically into the constitutional worlds of these new players on our constitutional stage. It is, of course, obvious that women, aboriginals, ethnic groups and official language minorities are separately engaged in constructing constitutional arguments specific to themselves. Not only do their constitutional interests differ, but they are occasionally in competition. Nevertheless, there are common features in their thought and behaviour, the analysis of which, I hope, will add to our understanding of the emerging constitutional order that we are gropingly learning to work.

One of our difficulties in working the modified constitutional order we were bequeathed in 1982 is that the traditional languages of federalism and parliamentary government are deeply embedded in the inherited mind sets of politicians, bureaucrats, and scholars. Inertia, and our investment in the historically developed intellectual capital appropriate to the constitution we have left behind, get in the way of grasping the meaning of the new constitution we now possess. Further, there is an uneven distribution of rapport with the new and old elements of the constitutional order scattered throughout the structures of the contemporary state and among the citizen body. The assimilation of the Charter by the Quebec francophone majority is clearly impeded by the consistent hostility of successive Quebec governments since 1982 to the Constitution Act of that year of which it is a part. Federal Liberal party members are more favourably disposed to the Charter than are Conservatives, presumably reflecting the divergent roles the two parties played in its creation. Consciousness of the rights revolution has been more fully assimilated by the judiciary than by the intergovernmental affairs specialists that seek to manage federalism. Hence, those who plan constitutional change from the vantage point of the old norms, identities, and practices are prone to privilege federalism as the institutional arrangement on which attention should be lavished, and to underestimate the extent to which the Charter has transformed the constitutional culture of Canadians, particularly in English Canada. That the managers of federalism, including first ministers, have been astonished and taken aback by the resistance



to Meech Lake suggests a remarkable lack of sympathetic comprehension in the highest quarters of the Charter's psychological impact on the citizenry.

## SOCIETAL PLURALISM AND CONSTITUTIONAL PLURALISM

In the '60s, when we began the round of constitutional introspection that is now entering its fourth decade, we thought our task was to replace or update a no longer viable version of French-English and of Quebec-Ottawa relations that were challenged by a modernizing Quebec nationalism. As we entered the '70s, centrifugal provincial pressures in English Canada enlarged the constitutional agenda, but did not discourage most scholars and policy-makers from defining their primary task as the repair of a faltering federalism, for which the appropriate physicians were governments. By the late '80s, with the Charter firmly in place, and the Meech Lake package apparently unravelling, it became evident that the cast of constitutional actors had expanded, and accordingly that the constitutional agenda could no longer be controlled by governments. How did this happen?

Various social transformations in the '60s and '70s that initially had no obvious connection to our constitutional agonies were pulled into the constitutional arena, as is noted below, by the Charter project. The essence of the social change of that period is captured by the powerful phrase "coming out," initially employed by the gay community. The ambit of the phrase can appropriately be extended to include the coming out of women, of aboriginal peoples, of third force Canadians, of visible minorities, of linguistic minorities, and of the disabled. In each case, their coming out challenged the comfortable assurance by which yesterday's dominant elites and majorities had defined the boundaries of acceptable, normal behaviour, and had transmitted their definitive cues of who was significant and who was not.

We turned out to have more closets in our background than we had been aware of, and they sheltered more of our fellow-citizens than we had appreciated. The opening of closet doors, and the coming out that followed, challenged the stigma that formerly attached to disapproved lifestyles and identities, and weakened the incentive to pass for something or someone else — as white, as heterosexual, as non-aboriginal, or as fully able rather than disabled. The resultant increased availability of options stimulated changes in behaviour and identities as the feminist movement graphically revealed. A related result was the proliferation of self-conscious demanding minorities.

These profound social transformations derive from domestic and international phenomena and the interaction between them. The ebbing of imperialism eats away at the status of those with ethnic or cultural affinities with what Victor Kiernan called *The Lords of Human Kind*.<sup>6</sup> Those of British background in Canada and elsewhere no longer gain an unearned boost to their self-esteem

from the large swatches of reassuring imperial red on the world's map; the experience of our public and private selves throughout western societies is no longer one of unquestioned male privilege — what may be called the gender aristocracy of males is under sustained attack; and cultural relativism has invaded the realms of sexual choice and behaviour so that heterosexuality is no longer a compulsion, but only one option in a smorgasbord of choice.

Adjustment to these challenges is not easy, for they involve our deepest sense of self. They challenge our core identities, whether we are the challenged or the challenging. To those of us who are WASPs, or WASMAs, as is the author — white, anglo-saxon, male agnostics — the message is that the old order is gone and we must change, that we can no longer be the beneficiaries of an edifice of privilege constructed over recent centuries, privilege that rests on the exploitation or exclusion of those who are “other” — such as visible minorities, women, aboriginals, and the disabled. To feminists, the society they challenge is not neutral or impartial, but rather is “a finely tuned affirmative action program” for men.<sup>7</sup> To another feminist scholar, the “‘main enemy’ of women’s equality [is easily identified]: men, and the State which has upheld the continued exercise of male authority over women, creating women as a subordinate and certainly a disadvantaged class.”<sup>8</sup> Aboriginal peoples nod their agreement that this society is biased, which in their case means the inequitable distribution of its advantages and disadvantages between those who are really founding peoples, indeed are “first nations,” and those who are later arrivals.

These identity transformations and value changes would unquestionably have occurred even if the constitution had displayed a rock-like stability. Further, by themselves they would have been insufficient to open up the constitution. However, the coincidental opening up of the constitution, and the fact that the federal government under Trudeau saw a Charter as a vehicle to weaken the power of a rampant provincialism, produced a symbiotic reciprocity of interest between a federal government looking for allies for its Charter project, and the emergent minorities avidly seeking the status and recognition that had been too long denied. They were encouraged to cast their objectives in constitutional terms. The affinity of these groups, excluding aboriginals, for the Charter was reinforced by the Charter’s anti-majoritarian thrust that overlapped their own similar attitudes. This mutuality of interest, modified by the trade-offs that occurred with provincial governments in the politics that produced the Constitution Act (1982), resulted in the enshrinement in the constitution of an orientation that can appropriately be called constitutional minoritarianism.

To put this point somewhat differently: the attempt to refashion the constitutional order to accommodate linguistic duality and to contain centrifugal pressures in federalism was partly derailed because dualism and federalism had no answers for an explosive minority self-consciousness organized around gender, ethnicity other than French and English, aboriginality, and the posses-

sion of physical or mental disabilities. The bearers of these newly aggressive identities jostled with dualism and federalism for space in the new constitutional order that was emerging. These minorities are hostile to conceptions of community that appear to marginalize them, that exclude them from the official portrait of who we are as a people. Their utility as allies to the federal government helped them to gain a foothold in the constitution, mainly via the Charter, from which they could further pursue their objectives. In section 37 of the 1982 Constitution Act, the aboriginal peoples were guaranteed a constitutional conference — that ultimately became four conferences — to identify and define their rights. The constitutional arena thus became one of the ongoing sites at which adjustment, responsiveness, and sensitivity to these new socio-intellectual forces would occur, or would be resisted.<sup>9</sup> With the minoritarian impulse deeply entrenched, that arena now became host to anger, resentment, bitterness, and frustration.

Intellectual currents in a complex modern society do not uniformly support or “help...[to] replicate the *established structures* of society,” but on the contrary, as Bruce Lincoln reminds us, are a mix of “tensions, contradictions, superficial stability, and potential fluidity.”<sup>10</sup> The striking feature of the present Canadian situation is that the “potential fluidity” and “contradictions” are within the constitution where they directly confront establishment thought, rather than being isolated in private realms, or confined to an underground existence from which they rarely surface. Thus, the constitution has become one of the central arenas within which social conflicts are played out. Various counter-discourses critical of established hierarchies and hegemonies have been constitutionalized. Unlike past counter-discourses that derived from federalism, the new ones link up with basic societal cleavages. The route from closet to constitution has been short, rapidly traversed, and fraught with unsettling consequences we are still digesting.

The controversies precipitated by these developments straddle the political and academic arenas. In a recent lecture I argued that the quality of public constitutional discussion in Canada was threatened by the near monopolistic possession of the right to speak on particular subjects by particular groups — section 28 and the sex equality provision of section 15, for example, by women. I suggested that men, or women who do not espouse feminist perspectives, are looked on coolly, somewhat as interlopers, or intruders if they enter, uninvited, this discursive terrain. I went on to assert the need to keep alive a disinterested scholarly discourse with no connection to causes or movements, but rather an approach committed to understanding, and that focused on the constitution as a whole.<sup>11</sup> I was informed at the time that I was simply using the standard technique by which dominant males protect their privileges by pretending to speak *ex cathedra* from some genderless Olympian mountain-top, one that

existed only in my imagination.<sup>12</sup> I appreciate the criticism, which is not the same as accepting it, and I am still mulling it over.

Given the politicization that is thus clearly invited by my subject, what follows may not be received as dispassionate, unassailable truth convincing to all. I will be content if it is accepted as a helpful vantage point from which something useful can be said in the service of our constitutional self-education.

## CONSTITUTIONAL IDENTITIES

Aboriginals, women, official language minorities and others have constitutional identities. They have been named — singled out for recognition — in the written component of the constitution that emerged in 1982. The inference is that they are constitutional somebodies. Their constitutional connection can be variously described, and it is worthwhile to linger on a few of the terms that can be employed.

We might say that they have niches in the constitution, that a particular clause (or clauses) is occupied by them, or is possessed by them. Indeed, the language of occupation or possession is widespread. It derives from the perception of the groups involved that they had to fight their way into the constitution. For example, “mental or physical disability” is included in the section 15 equality rights because of the persistent and powerful lobbying of organizations speaking for persons with such disabilities. Section 28, in spite of its gender neutrality phrasing, is the women’s clause. It is there because women’s groups successfully fought for its inclusion and its wording, and not surprisingly they have a proprietary attitude to its interpretation and development.

These groups can be described as having constitutional identities. This may seem trivial until we remember the pride and status enhancement English Canadians long enjoyed from living under a constitution “similar in Principle to that of the United Kingdom.” The “Distinct Society” label in the Meech Lake Accord is a contemporary example of a naming clause that was sought partly because of its status-giving properties. It is bitterly resented by many outside Quebec for the status deprivation they feel it visits on them. The Preamble of the Charter, stating that “Canada is founded upon principles that recognize the supremacy of God and the rule of law” was recently described as historically inaccurate from an aboriginal perspective, and “insensitive to cultural differences.”<sup>13</sup> On the other hand, in the original BNA Act, “Indians, and Lands reserved for the Indians” (section 91(24)) was the constitutional basis for the construction of a people — “status Indians” — who do not relate as other Canadians do to the jurisdictional divisions of federalism. Status Indians have always viewed section 91 (24) of the BNA Act as giving them a special constitutional identity, and a resultant entitlement to distinctive treatment that they do not wish to relinquish, no matter how much they try to alter its specifics.

The category, Status Indians, which generates a political identity, is legal, not ethnic. Its members include many, especially women, who have no Indian ancestry; hundreds of thousands of others whose Indian ancestry, in whole or significant part, is impeccable, are excluded as falling outside the criteria that determine who does and who does not have legal status.

The significance of constitutional naming was driven home recently by the breakup of the Association of Métis and Non-Status Indians of Saskatchewan (AMNSIS). A bitter split was precipitated by the Métis leadership following the section 35 recognition of the Métis in the 1982 Constitution Act as part of the aboriginal peoples of Canada — what a Métis leader described as constitutional recognition of the Métis “as a distinct people.”<sup>14</sup> The Métis leaders concluded that this separate constitutional status and the goals it legitimated had to be served by a separate Métis organization.

Groups with constitutional identities occupying constitutional niches inevitably have stakes in the constitution. They have developed mini-histories of how their clause was won against strong odds. In official settings they tend to preface their remarks by reciting the landmarks in their evolution to constitutional recognition. They tend, in other words, to have their own Whiggish versions of colony-to-nation ascents appropriate to their achieved constitutional status as, for example, women (S.28), or “third force” Canadians (S.27). The constitution that gives them status matters to them. They have made constitutional investments and they expect appropriate returns.

Consequently, they, and especially their official spokespersons, have powerful incentives to foster beneficial interpretations of “their” constitutional clause(s). Accordingly, they see themselves as legitimate participants in elaborating the various languages that envelop the constitution and thus influence its evolution. They think they have constitutional standing.

So, the groups concerned occupy niches in the constitution, possess constitutional clauses, carry constitutional identities, own stakes in their constitution, and in their own eyes have constitutional standing.

## NEW AND OLD CONSTITUTIONAL DISCOURSE

The contemporary Canadian practice of federalism and parliamentary government rests on an extensive literature now in its second century. Thus Ed Black did not lack for material as he deciphered and analysed the principal criteria by which Canadian federalism has been evaluated.<sup>15</sup> The traditions of parliamentary government, likewise, have their expositors, from Alpheus Todd,<sup>16</sup> who tried to instruct the rude inhabitants of a frontier society in the practices of responsible government in the nineteenth century, to Ned Franks who instructs the present generation in its practice in the closing decades of the twentieth century.<sup>17</sup>

Indeed, from one perspective, the living nature of the constitution formerly rested on little more than the evolved understanding of these arrangements. Further, federalism and parliamentary government are functioning systems that are daily worked by politicians and civil servants. They constitute, in Mallory's apt language, the habitat of the politician.<sup>18</sup> They have, accordingly, been lovingly explored by those who tend our constitutional arrangements.

This is not the case with the newer constitutional categories. While to think of the significance of gender for the constitution, or of the constitution for gender, or of how aboriginal self-government might or might not fit into our constitutional system does not require us to start from scratch, such thought is inevitably less rooted, more experimental, and more open and indeterminate than is the case with such historic practices as federalism. Even the discourse of rights, although not without deep roots in our British and French constitutional traditions, is, in its Charter derived present form, clearly a departure from the historic theory and practice of our constitution.

It is possible, of course, that an unbiased re-examination of the past may supplement the available stock of intellectual resources for these and other "newer" constitutional subjects. We may rediscover traditions we had lost. The major practitioners of these emerging constitutional conversations often engage in a historical revisionism as they seek to portray a past in which their kind of people or aspirations feature more prominently than in conventional accounts; they also search for and find predecessors who struggled for the same or similar goals as they do. Clearly, however, much of these pursuits can be brought under the copious umbrella of what Hobsbawm and Ranger have helpfully labelled *The Invention of Tradition*.<sup>19</sup>

Such attempts to create a usable past are the hallmarks of social movements. Even should they succeed, however, these new usable pasts will be thinner and shallower than the historic roots that sustain the more traditional themes of constitutional discussion. Antecedent discourses on federalism and parliamentary government do not have to be rescued or salvaged from an unfriendly past; they already dominate our constitutional past and our constitutional bookshelves.

In other ways, however, new and old constitutional discourses are not dissimilar. In both cases, discussion by self-interested participants rarely focuses on the constitution as an undifferentiated whole. Since the constitution is an aggregation of particulars, the organized interests that cluster around it always devote special attention to the clauses particularly germane to their goals. Thus in the early post-Confederation decades Premier Oliver Mowat of Ontario assiduously devoted himself to the protection and expansion of provincial jurisdictional rights under section 92 of the BNA Act. Prior to the return of their natural resources in 1930, the governments of the prairie provinces vigorously fought for the equal treatment in the possession of natural resources

under section 109 that had been denied to them by the original terms under which they entered Canada or were created. At various times, components of the business community have fought, as self-interest dictated, for generous or restrictive interpretations of clauses impinging directly on their pursuits.

The tendency for the organized interests of a free society, including governments, to line themselves up like iron filings responding to a powerfully discriminating constitutional magnet continues under the Charter and the 1982 Constitution Act of which it is a part. Not only does the existence and even wording of individual clauses reflect the lobbying activities of particular groups in the frantic environment out of which the Constitution Act emerged, but their victories are followed by organized efforts to gain the maximum subsequent advantage from the clauses most linked to their constitutional fate. Thus, aboriginal organizations invested their aspirations, subsequently dashed, in the section 37 requirement of the Constitution Act that a constitutional conference, with aboriginal participation, would be held to identify and define the rights of aboriginal peoples; while Anglophones inside and Francophones outside Quebec view the section 23 clauses dealing with official minority language education rights as constitutional entitlements and recognitions of which they are the guardians.

The Charter has called forth an interest group structure that parallels the cleavages and interests that it singles out for attention, especially in sections 16 to 28. Indeed, it is not unrealistic to speak of the competitive colonization of the constitution by organized interests, most notably governments of course, but since the 1982 Constitution Act, extensively supplemented by organized private interests.

## THE MINORITARIAN IMPULSE

The style and emotional overtones of the discourse of these new constitutional participants display striking similarities, whether the speaker is making claims for the aboriginal people, women, the disabled, or the others who fall into the categories I have been discussing. They are not confident elites accustomed to wielding power, and taking for granted that their views will have an impact on the subject under discussion. On the contrary, theirs is the language of minorities, of outsiders self-consciously aware that their concerns may be knowingly or inadvertently overlooked.<sup>20</sup>

The self-descriptive labels they employ underline their exclusion or their less than full status. Thus feminists not only frequently refer to Simone de Beauvoir's *The Second Sex*,<sup>21</sup> but employ self-descriptions that invariably agree with its thesis of the discriminatory treatment of women. In the sixties, those who were neither British nor French, and thus excluded from the privileged circle of founding peoples, coined the phrase the "third force" to

describe their status as late arrivals who feared exclusion when the descendants of those who did battle on the Plains of Abraham met to do constitutional business. A Canadian aboriginal leader surveying the status of indigenous native peoples around the globe described them as belonging to the Fourth World.<sup>22</sup> The Métis are often described as *The Forgotten People*,<sup>23</sup> and even as *The Non-People*.<sup>24</sup> In the mid-'70s a speech by the President of the Inuit Tapirisat described the Inuit as living in "a forgotten colony. . . in the sense that when it's out of sight, it's out of mind."<sup>25</sup> Indian women who formerly lost their status when they married non-Indian men were labelled *Citizens Minus*<sup>26</sup> in an account of their condition. Immigrant women, often described as doubly oppressed as women and as immigrants, or as trebly oppressed if they are also visible minorities, were recently called "the 'muted shadows,' the silent partners of our society and the women's movement."<sup>27</sup>

These labels, of course, are more than simple descriptions, and less than identities proudly assumed. They are resentful accusations at the society that inflicts such injustice on the group concerned.

Particular groups are sometimes defined by what they are not — non-status Indians, and the (mentally or physically) (dis)abled; or by where they are not — Francophones outside Quebec; or by identities they cannot shed — visible minorities; or, as in the case of allophones, as a leftover category after the boundaries and rights of the more prestigious anglophones and francophones have been constitutionally determined.

These labels all suggest marginality, and not getting full measure. The rhetoric of these constitutional minorities is a litany of such words as forgotten, ignored, subordinated, and exploited. They nurse memories of past maltreatment, of having been wronged for too long. This is cogently illustrated, for example, by a 1978 publication of the Federation of Francophones outside Quebec, with the haunting title *The Heirs of Lord Durham: Manifesto of a Vanishing People*.<sup>28</sup> Past injustice often generates demands for some tangible or symbolic compensatory response in the present. At this time, Chinese Canadians, Italian Canadians, and Ukrainian Canadians all have made public claims for the redress of particular instances of historical maltreatment, presumably encouraged by the success of Japanese Canadians in getting a settlement for their World War II experience of relocation, internment, property seizure, and deportation. Aboriginal peoples, of course, have innumerable historical claims to be resolved by negotiation or in the judicial arena. Further, affirmative action is often justified as an appropriate rectification of the surviving effects of past discrimination. Thus, for many Canadians, historical memories provide a constant reminder that earlier versions of the society in which they now live dealt unkindly with their ancestors or their younger selves. In general, the elites of these groups have little sympathy for former Prime Minister Trudeau's assertion that "we must forget many things if we want to live together



as Canadians," and that we can only be just in our time, based on the premise that the past is a minefield in which it is better not to tread.<sup>29</sup>

The sense of injustice and marginality, of being the new kids on the constitutional block, gives the constitutional contributions of these new constitutional actors a certain biting edge. Although they are in the constitution, they are cognizant of the relative weakness of the organizations that speak for them, compared to governments. Unlike governments, whose historic bureaucratic base provides resources for the long haul, the nascent bureaucracies of these new constitutional actors are fragile, and their practice amateurish and somewhat volatile. They often have limited private resources, and are thus subject to the vagaries of government funding. Their staff and clientele are prone to mood fluctuations ranging from the exultation of heady triumph to the gloom of bitter despair when they encounter rebuffs. Often their clientele is heterogeneous and divided over strategy and objectives, which makes leadership very difficult.

Cumulatively, the preceding considerations generate a rather shrill, aggressive discourse, a product of their sense that their presence in the Constitution/Charter is precarious. Consequently, their attention is directed unremittingly to their own precise constitutional concerns, not to the larger claims of the community or to the overall health of the constitutional order. Such concerns are left to others.

#### THE CHALLENGE TO MAJORITARIANISM AND TO TRADITIONAL PATTERNS OF REPRESENTATION

Precisely how these tendencies to constitutional minoritarianism will develop is unclear. However, the general direction of the pressure they will apply to our constitutional governing arrangements can be discerned.

Criticisms of majoritarianism are natural to peoples possessed of the federal condition. Quebec nationalist pressures for sovereignty or special status are attempts to eliminate or restrict the application of Canada-wide majorities to Quebec. Similarly, the pressures for a Triple-E Senate are fed by the fears of the numerically weaker provinces of outer Canada that their interests are likely to be ignored in a population-based majoritarian system, especially one where executive power is sustained by party discipline. These are the classic apprehensions of territorially grouped peoples in a federal system which, although designed to remove such peoples from the application of country-wide majority rule in matters given to the states or provinces, nevertheless, leaves a central government with powers whose exercise may appear regionally biased.

The minoritarianism that is of concern in this lecture, however, is not that of Nova Scotians, Albertans, or Québécois — provincial peoples with governments at their disposal — but of women, aboriginals, ethnic Canadians and

others who exist as minorities within provincial, territorial, and national boundaries.<sup>30</sup> With rare exceptions, such as a possible Inuit dominated province of Nunavut, or possibly some of the larger First Nations governments, these minorities cannot hope to wield significant power as majorities in newly devised political arrangements. It is likely, given the constitutional identities these groups now possess, and their historically rooted suspicion of the state as an instrument of others, that the legitimation of public policies whose justification resides in majority support will be increasingly challenged.

Self-perceived minority status, and an ideology of being second class, victimized or ignored slip easily into a distrust of representatives dissimilar from themselves. Such attitudes are sustained by their relative absence from governing elites. When they look at the state they do not see it as mirroring their proportion of the population. Historically, they were late arrivals in obtaining the franchise, Quebec women not receiving the provincial vote until 1940 and status Indians not receiving the federal vote until 1960. These historical reminders of the recency of their full political citizenship underline the negative evaluations placed on their civic capacities in, for many, their own lifetime. That they have doubts about the wisdom of leaving their fate in what they define as other hands is scarcely surprising.

They are suspicious of theories and practices of representation that imply or assert that representatives can be trusted to speak for citizens/constituents when they lack the defining characteristics of the latter. Their distrust is not confined to legislatures, but extends to all institutions that have a representative component, including courts, and the elite dominated practices of executive federalism, perhaps especially when constitutional amendments are on the agenda.

To aboriginals and women's groups, the making of the 1982 Constitution Act provided wounding evidence that when their backs were turned recognitions and rights they thought they had won could be removed in a closed meeting of first ministers. Meech Lake has received a barrage of criticisms that eleven able-bodied white males cannot be trusted to represent and protect the constitutional concerns of women, aboriginal peoples, visible minorities and others who were not represented at the bargaining table by politicians who shared their defining characteristics. As Stefan Dupré gloomily observes, the sequel to the Meech Lake/Langevin meetings that produced the Meech Lake Accord is the reviling of executive federalism, viewed as "secretive and manipulative." He continues: "The eleven 'men' at the apex of our constitutional executives are not viewed as having either a duty or a capacity to discern the public interest." This is evidence, he concludes, of a serious "degree of alienation from the values that underpin the Canadian constitutional marriage of cabinet-parliamentary government and federalism."<sup>31</sup> In a nutshell, the dominance of governments in formal constitutional change is no longer sustained by an automatic deference of the citizenry. Thus an attempted *fait accompli* approach

to constitutional amendment typified by the early stages of Meech Lake is incompatible with the kind of constitutional people Canadians have become.

Courts are subjected to the criticism that minorities are not proportionately represented in their ranks, resulting in a lack of empathy for the concerns of such underrepresented groups. Thus, the Canadian system of courts was recently criticized by an aboriginal professor of law for its "elitist and culturally-specific (European) character...a formalized adversarial and impersonal institution...unknown amongst Aboriginal peoples," and one in which "the representatives of the dominant (settler) communities write and 'interpret' the law for all Canadians..."<sup>32</sup> Comments on judicial decisions not infrequently refer to the class, ethnic, religious, or gender composition of the court. For example, when the injunction upholding the prohibition of Chantal Daigle from having an abortion was upheld by the Quebec Court of Appeal, her sister stated: "It's the decision of a group of men... If there were four women and one man on the panel, it would have been different."<sup>33</sup> In more measured tones Madame Justice Bertha Wilson in a recent address with the title "Will Women Judges Really Make a Difference?" responded with an emphatic if qualified "Yes!" Among other supporting evidence, she cited the recent work of Carol Gilligan, whose "central thesis [is] that women see themselves as essentially connected to others and as members of a community while men see themselves as essentially autonomous and independent of others."<sup>34</sup> Madame Justice Wilson also drew extensively on the chapters of a recent volume on *Equality and Judicial Neutrality* which stated in its preface that "As the vast majority of Canadian judges are appointed from the privileged elite class of white, male, able-bodied persons, it is appropriate and inevitable that equality seekers question the judiciary's ability to be neutral on legal issues which challenge the disproportionate distribution of power and wealth to their class."<sup>35</sup>

The minoritarian critique of majoritarianism and of the capacity of representatives to speak for minority perspectives that are absent from, or only weakly present on representative bodies, will not quickly disappear. It is sustained by the politicization of minorities, their constitutional recognition, and their (somewhat precarious) self-confidence that has already been discussed. It is also linked to a pervasive characteristic of contemporary culture that questions the capacity and right of one individual to speak for and represent someone else whose sex or ethnic background, for example, is not the same.

The issue of who should have "voice," or who can speak for whom is a hotly debated issue in scholarship,<sup>36</sup> literature, and the theatre.<sup>37</sup> In history, travel literature, and social commentary "Westerners had for centuries studied and spoken for the rest of the world..." However, since mid-century "Asians, Africans, Arab orientals, Pacific Islanders, and Native Americans have in a variety of ways asserted their independence from Western cultural and political hegemony and established a new multivocal field of intercultural discourse."<sup>38</sup>

The same author, James Clifford, continues: "The time is past when privileged authorities could routinely 'give voice' (or history) to others without fear of contradiction."<sup>39</sup> The change is neatly summed up in the aphorism that formerly anthropologists had their tribe; now tribes have their anthropologist. For the western anthropologist, according to Clifford Geertz, "the very right to write — to write ethnography — seems at risk. The entrance of once colonized or castaway peoples (wearing their own masks, speaking their own lines) onto the stage of global economy, international high politics, and world culture has made the claim of the anthropologist to be a tribune for the unheard, a representer of the unseen, a kenner of the misconstrued, increasingly difficult to sustain."<sup>40</sup>

Placed in this larger global context of exploding change and politicized internal minorities and external majorities who formerly were mute, but no longer are, the issue of representation is no longer straightforward, particularly in heterogeneous societies characterized by multiple forms of self-consciousness. It would be naive to assume that these profound cultural changes will leave the world of politics, government, and the constitution untouched. Geertz recently stated that "The end of colonialism altered radically the nature of the social relationship between those who ask and look and those who are asked and looked at."<sup>41</sup> The functionally equivalent and equally true domestic statement would be that the emergence of voice for formerly quiescent domestic minorities in Canada alters radically the nature of the relationship between those who represent and those who are represented. In each case, the authority of a formerly dominant "other" is challenged.

## THE STAYING POWER OF THE NEW CONSTITUTIONAL ACTORS

Given the marginality of the groups I have been discussing, it is nevertheless reasonable to enquire further if they might not fade away, and be reduced to the status of a minor side-show far removed from the settings where the big constitutional battalions do business. What, in other words, is their staying power? At the risk of adding to the graveyard already overflowing with wrong-headed social science predictions, my answer is that they will have considerable staying power — that they constitute permanent additions to our cast of constitutional actors. I have several reasons for my prediction.

1. The simple fact that these groups have constitutional identities, status, rights, and claims provides a high probability that they will survive. Their placement in the constitutional firmament gives them a permanent rallying point around which they can reorganize following fallow periods. In addition, of course, the ongoing life of the constitution guarantees that constitutional issues directly affecting or indirectly impinging on their constitutional interests will recurrently emerge in the judicial arena, in discussions of constitutional amendments, and in

public constitutional debate. Consequently, they will experience constant pressure and incentives, particularly their elites, to be constitutionally involved.

2. The social movements and intellectual tendencies that lie behind the high profile of aboriginal, gender, and the other concerns of this essay are not idiosyncratically Canadian, and thus exclusively dependent on domestic factors for their ebb and flow. On the contrary, they are intimately connected to transformations in the legal, socio-political, and normative components of the international environment which individual states cannot ignore.

A common approach of international lawyers to the significance of the international dimension is to argue that the evolution of international law, especially in those areas where Canada has ratified United Nations covenants, constitutes a source to which Canadian judges and legislators should look when interpreting Charter rights in the Canadian context. Essentially, this argument asserts that Canada and other states are part of a normative, legal network of evolving understandings of citizen-state relations, to some of which, especially those fashioned by the United Nations, Canada has officially subscribed, and which Canada is therefore obligated to observe.<sup>42</sup>

An alternative approach, adopted here, is to stress the social, emotional, and psychological consequences for the citizenry of post-World War II changes in the international environment. Here, the significance of the United Nations Charter, for example, or of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (adopted by the General Assembly on 18 December 1979, and ratified by Canada on 10 December 1981)<sup>43</sup> is not how they should inform judges and legislators, but rather their availability as political resources, and their role in contributing to the self-confidence and identities of the groups to whom they refer. They constitute reassuring reminders that one is not alone. More generally, women's groups and aboriginal organizations are at least loosely integrated into international movements. It is not unreasonable to talk of a feminist international, or of an international of indigenous peoples. The international literature, comparative examples, and role models to which women and aboriginals look, provide positive comparisons that can be exploited, expand their horizons, and give them emotional support at the Canadian site where their particular struggles are engaged. In the most general sense, therefore, the international environment is broadly supportive of the domestic struggles and ambitions of women, indigenous peoples, the disabled, and ethnic minorities that challenge unsympathetic hegemonies.

3. In several cases, especially with respect to women, third force Canadians, visible minorities, francophones outside Quebec and aboriginal peoples, a scholarly infrastructure has developed that on balance lends credibility to their grievances. This is partly because of the propensity for the relevant professoriate to be drawn from the group concerned. In recent decades, there has been a proliferation of journals, scholarly chairs, academic programs, and institutes that accord a sympathetic and high profile to the minority groups they study. In a remarkably short period, impressive literatures have emerged. These scholarly developments undoubtedly add staying power, credibility, and legitimacy to the minorities concerned and their objectives.
4. A relevant factor for those minority claims that are driven by the ethnic transformation of Canadian society is that immigration is clearly pushing Canada in a more multicultural, multi-racial direction. The population of British and French background continues to shrink, as more generally does the European background population. Particularly in the great metropolitan centres of Montreal, Toronto, and Vancouver, the emerging populations are, in David Cameron's evocative phrase, "riotously multicultural."<sup>44</sup> These recent arrivals will almost certainly invigorate an ethnic debate that will challenge the constitutional hegemony of the French and English founding peoples. In a nutshell, the social forces, behind multiculturalism/multiracialism will be strengthened, and those behind a founding people dualism will be weakened.  
 Relatedly, the high birthrate of the indigenous peoples, along with the constitutional stimulation of the category aboriginal by the inclusion of Métis as one of the aboriginal peoples of Canada, indicate that the varied demands of the aboriginal people will be part of the Canadian constitutional condition for the foreseeable future.
5. Finally, there is an imitative, contagion effect. Each group's activities and demands support an overall orientation to the constitution that is sympathetic to minorities.

The strong likelihood, suggested by the preceding, that these new, minority syndrome constitutional actors are here to stay is also supported by a conjectural detour with which I will conclude this section.

The eagerness and stridency with which women, aboriginals, ethnics, and others have come forth in response to the opportunities provided by the 1982 constitutional change suggest the prior existence of frustration and resentment that was waiting to be tapped. Was our previous constitutional order perhaps less healthy than we have been led to believe? Did we perhaps misconstrue as supportive if mute acquiescence what was in reality an indifference or alienation that lacked constitutional outlets? How else do we explain the proliferation

of groups throwing themselves into the constitutional game, especially that of the Charter, with such zest?

One answer is provided by Mary Douglas, who notes that as government statistical data mushroomed in 19th century Europe, and as "new medical...criminal... sexual or moral categories [were invented] new kinds of people spontaneously came forward in hordes to accept the labels and to live accordingly." There was, she suggests, a dramatic "responsiveness to new labels [that] suggests extraordinary readiness to fall into new slots and to let selfhood be redefined."<sup>45</sup>

The Douglas thesis clearly has considerable cogency. Canadians have been remarkably fertile in developing new rubrics, either directly in the constitution, or even more impressively in less formal constitutional discourse around which the citizenry has regrouped and acquired new identities. The labels First Nations, Inuit, Dene, Aboriginal, Québécois, Third Force, Visible Minority, Multicultural, Official Language Minorities, and Francophones outside Quebec illustrate the point. None of these labels would have found their way into a Canadian dictionary of political terminology as recently as 30 years ago. Those labels that get into the written constitution have perhaps a more persuasive shaping capacity than those that do not, but the latter often serve as the vehicles of constitutional ambitions not yet realized. Of course, not all the labels are new — race, colour, sex, mental or physical disability, male and female persons, Indian and Métis are standard designations. Their placement in the constitution does not provide their bearers with new identities, but it does enhance the salience of identities they already had.

A second possible answer is provided by Timothy Garton Ash, a student of central Europe who writes of "the split between the public and private self, official and unofficial language, outward conformity and inward dissent — in short, the double life... a phenomenon common to all Soviet-bloc countries."<sup>46</sup> In such repressed societies, there are covert, long submerged identities that will chaotically burst forth in propitious circumstances. This is graphically revealed in a description of what happened after the workers organized against the armed forces in the Spanish civil war. "Virtually overnight the rules and habits of centuries dissolved, and a sweeping transformation in the conduct of human relations was accomplished. Suits and neckties disappeared, and overalls became the preferred dress. Women took to the streets and catcalls were forgotten. Waiters stared customers in the eye and spoke to them as equals. Bootblacks refused tips as signs of condescension and charity."<sup>47</sup>

To put it differently, outward conformity always exceeds private belief in any society; there is always much quiet desperation, repressed anger and sense of injustice, even in open and democratic societies. Such sentiments may be relatively invisible for long periods, but they always constitute a latent source of disruptive potential when the structure of incentives changes. While the

Canadian case is not properly to be compared to Central Europe or to the Spanish Civil War, a milder version of a similar process appears to have taken place — one in which the activity of “coming out” described earlier revealed tensions that had previously been hidden and which, because of the accident of timing, were given constitutional expression.

Yet a third vantage point, which in a sense combines the two preceding suggestive answers, and does so from a more overtly political perspective is offered by Samuel LaSelva. Federalism, he observes, speaks only to the territorial dimensions of our existence — our membership in Canadian, provincial and territorial communities, while the Charter addresses us as individuals and members of groups who are indifferent and sometimes hostile to federalism’s categories. Federalism, he asserts, “lacks the conceptual resources” to respond to the claims of individuals and groups for justice and freedom. “That is why a Bill of Rights is so important in a federal state. Through it, individuals and groups are given recognition in a federal system, and their interests are placed on the same footing as those of other constitutional actors.”<sup>48</sup>

If LaSelva’s answer is, as I believe, correct, then the support for the Charter in the kind of heterogeneous society with multiple non-territorial cleavages that Canada is becoming is not an occasion for surprise. Rather, the Charter, the possibility of a more precise and generous recognition of aboriginal rights, and the general opening up of the constitution from which they both emerged were positively liberating. They were welcomed by those Canadians who did not find it easy to give voice in the constitutional order of parliamentary government and federalism. The chaos and babble of discordant voices to which this opening up seems to lead in the short run is in reality the early stage of a process of honest self-discovery on which we have embarked.

I conclude, therefore, that minoritarianism will be an enduring constitutional presence in our future, and that it is a profoundly important modification of our constitutional order. Whether we will successfully respond to its imperatives is a difficult and open question. As Meech Lake makes clear, the strident and multi-faceted emergence of minoritarianism makes a negative contribution to our capacity to respond to the older, more traditional concerns of dualism and regionalism. Nevertheless, an ostrich approach that denies and ignores these changes is no recipe for success in managing our constitutional affairs. Finally, no matter how much our existence may be disturbed by what I have called an emergent minoritarianism, surely its appearance is to be welcomed. For women, aboriginals, the disabled, minority ethnic Canadians, visible minorities and others to have received constitutional sanction as they emerge from the background, drop their masks, and seek to be more authentically themselves is surely to be welcomed. As Jan Smuts once said, “the caravan of humanity has packed its tents and is on the move again.”<sup>49</sup>



## CONCLUSION

In 1963, J.A. Corry delivered the Alan B. Plaunt Memorial Lectures under the title *The Changing Conditions of Politics*.<sup>50</sup> What I have tried to do in this lecture is a sub-category of Principal Corry's theme — The Changing Conditions of Constitutional Politics. Our lectures identify instabilities in our respective situations, and if not a nostalgia for an order that is disappearing, at least a recognition that past guidemarks will no longer fully serve.

The constitutional world we have lost was simplicity itself compared to the constitutional world we have gained. One of its organizing rubrics, federalism, was the vehicle through which we discussed the relation between our federal and provincial selves, both as governments and as peoples, as well as how the two historic founding French and English peoples should relate to each other. A second rubric, responsible government and parliamentary supremacy, provided us with a focus for organizing our thoughts on the appropriate relationship between executive leadership and representative democracy. A third organizing rubric, now departed but a significant if admittedly diminishing presence until only a few years ago, was how we were to manage or modify the coexistence of our Canadian selves and our inherited constitutional links to the Mother country.

By and large, all three of these foci for constitutional introspection were elitist and governmental. Governments played the leading role in the great battles over federalism in our history. They fought each other in court, bargained with each other in executive federalism, and commissioned the great official inquiries, such as the Rowell Sirois and Tremblay Reports, that sought to impart new senses of direction to our federalist future. Responsible parliamentary government raised crucial constitutional questions, but they all presupposed the centrality of relations among the institutions at the top of our political pyramid — Cabinet, Commons, Senate, and representative of the Crown, or their provincial equivalents. The colony-to-nation focus, to simplify only slightly, addressed the pace at which imperial functions performed by British constitutional actors should be devolved to governments in Canada, or in the case of the Judicial Committee to the Supreme Court.

What was strikingly absent from this constitutional world? Gender, the status of aboriginal peoples as a constitutional concern, the relationship between the two founding peoples and the "others," and indeed virtually all the minoritarianisms that I have been discussing in this lecture. Finally, and directly related to the preceding of course, there was no Charter or Bill of Rights that explicitly incorporated the citizenry into the constitutional order. Thus the constitutional law that preceded the Charter rarely addressed "relationships...between governments and citizens...because the Constitution Act, 1867 was virtually silent about those relationships."<sup>51</sup>

The constitutional world we have lost had many virtues, as our evolution from four small struggling colonies in 1867 to the prosperous, democratic Canada we have inherited testifies. On the other hand, it bequeathed us an impoverished constitutional theory. Our long quasi-colonial status deflected our attention from indigenous constitutional concerns, or transmuted them into issues in colonial-imperial relations. For example, the debate about the role of the Judicial Committee of the Privy Council in constitutional interpretation, and whether Canadians should assume the task of judicial interpretation for themselves, became an issue of nationalism versus imperialism that deflected attention from the fundamental jurisprudential questions of the appropriate role, composition, and constitutional status of an autonomous Canadian Supreme Court that could be overruled by no higher authority. The continuing British role in amending the Canadian constitution until 1982 prevented us from recognizing, and confronting, the even more fundamental question of where sovereignty should reside in Canada once the role of the Westminster Parliament had been finally eliminated. More generally, the very British absence of a Charter until 1982 not only deprived us of a rich constitutional language organized around "rights," but, in conjunction with the absence of a revolutionary tradition, left us with only a very thinly developed conception of citizenship. These characteristics of the constitutional world that we have lost ill-prepared us for the new constitutional world that we gained by the 1982 Constitution Act providing us with a Charter and a purely domestic amending formula.

Success in maneuvering through the new constitutional world will not come easily. The cultural support base of the constitutional order has been irreversibly modified. The constitutional hegemony of the concept of founding peoples restricted to the British and French is in retreat, encroached on from one side by aboriginal peoples who claim real founding status, and from the other side by a rapidly growing multicultural, multiracial population that resists linking status to the length of one's Canadian ancestral line.

The elitisms of cabinet government and executive federalism — including the amending formula — presuppose a deferential citizenry that is not yet gone, but that is in retreat. Representative practices based on women deferring to men, and on those who were neither British nor French deferring to those who were, can no longer be taken for granted. In our new constitutional world, majorities will be less easy to create and to maintain; elites will have to be more sensitive to the suspicious minorities that have come out of the recesses of our society; in brief, we will have to pay more attention to the citizen base of the constitutional order.

No better proof of that requirement could be provided than the difficulties encountered by the Meech Lake Accord. Fashioned in back rooms, unanimously agreed to by 11 first ministers, supported originally by all three parties in the House of Commons, engineered at the federal level by a party less committed

to the Charter than were its Liberal sponsors, indulgently described in its early days as a constitutional miracle by its creators, with the process that led to it being singled out for special praise by its chief federal government architect, Lowell Murray,<sup>52</sup> Meech Lake now appears, as this lecture is being given in March 1990, to have been based on a profound misreading of the constitutional culture that the Charter had influenced.

That the elitist practices of parliamentary government and executive federalism could not prevail against an uncoordinated gaggle of minorities is a clear indication of the constitutional disarray in which Canadians find themselves. A healing response will require a scrupulous sensitivity to the varied minoritarianisms that I have impressionistically described in this lecture.

The approach of this lecture has been sociological, or anthropological, a piece of reportage, as it were, of some of the fault lines in the Canadian constitutional order. A different and tougher task remains to be done, the elaboration of a political theory appropriate to the need for a rapprochement between the majoritarian and minoritarian elements in contemporary Canada, and the devising of institutional arrangements for its expression.<sup>53</sup>

#### NOTES

1. Bruce Lincoln, *Discourse and the Construction of Society: Comparative Studies of Myth, Ritual, and Classification* (New York: Oxford University Press, 1989), p. 11.
2. Adrienne Rich, cited in Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989), p. ix.
3. J.A. Corry, *My Life and Work, a happy partnership: Memoirs of J.A. Corry* (Kingston, Ont.: Queen's University, 1981).
4. For a preliminary discussion, see Alan C. Cairns, "Political Science, Ethnicity, and the Canadian Constitution," in David P. Shugarman and Reg Whitaker, (eds.), *Federalism and Political Community: Essays in Honour of Donald Smiley* (Peterborough: Broadview Press, 1989).
5. Robert C. Vipond, "Whatever Became of the Compact Theory? Meech Lake and the New Politics of Constitutional Amendment in Canada," *Queen's Quarterly* 96/4 (Winter 1989).
6. Victor G. Kiernan, *The Lords of Human Kind* (New York: Columbia University Press, 1986).
7. Gwen Brodsky and Shelagh Day, *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?* (Ottawa: Canadian Advisory Council on the Status of Women, 1989), p. 149.
8. Lorene M.G. Clark, "Liberalism and the Living-Tree: Women, Equality, and the Charter," *Alberta Law Review*, XXVIII,(2), 1990, p. 392.
9. For the aboriginal challenge see Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences," in Michelle

- Boivin, et al. (eds.), *Canadian Human Rights Yearbook*, (Ottawa: University of Ottawa Press, 1990). For an analysis of what "real women's distinctive view of human interaction [could] do for the Constitution and thus for all of us," (with respect to the American constitution,) see Kenneth L. Karst, "Woman's Constitution," *Duke Law Journal*, vol. 1984, June, no. 3. For a basic overview of feminist orientations to law in Canada see Susan B. Boyd and Elizabeth A. Sheehy, "Canadian Feminist Perspectives on Law," *Journal of Law and Society*, vol. 13 (3), Autumn, 1986. See also the various bibliographies produced by Resources for Feminist Research.
10. Lincoln, *Discourse and the Construction of Society*, p. 7. Italics in original.
  11. Alan C. Cairns, "Ritual, Taboo, and Bias in Constitutional Controversies in Canada, or Constitutional Talk Canadian Style," The Timlin Lecture, (Saskatoon: University of Saskatchewan, 1989).
  12. Subsequently, I encountered the criticism of Christine Boyle of "writing that embodies a male perspective on the world masquerading as an objective non-gendered perspective. This masquerade embodies an extravagantly polemical statement that the male equals the human and that it is not worth inquiring about the existence of a female perspective." "Criminal Law and Procedure: Who Needs Tenure?" *Osgoode Hall Law Journal*, 23 (3), 1985, p. 428.
  13. Turpel, "Aboriginal Peoples and the Canadian Charter," p. 7.
  14. Jim Sinclair, AMNSIS President, cited in *New Breed* (August/September 1987), p. 4.
  15. Edwin R. Black, *Divided Loyalties: Canadian Concepts of Federalism* (Montreal: McGill-Queen's University Press, 1975).
  16. Alpheus Todd, *Parliamentary Government in the British Colonies* (Boston: Little Brown, 1880).
  17. C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987).
  18. J.R. Mallory, *The Structure of Canadian Government* (Toronto: Macmillan, 1971), p. xi. Mallory's use of *habitat* specifically refers to "Parliament, the Cabinet, and the institutions related to them," to which I have added federalism.
  19. Eric J. Hobsbawm and Terence Ranger, (eds.), *The Invention of Tradition* (New York: Cambridge University Press, 1983).
  20. "Equality-seekers have historically had the least access to the levers of power and the least experience with traditional venues of decision-making. They continue to operate from a disadvantaged position. Their 'partnership' in the community of persons concerned with the Charter remains unequal." Magda Seydegart, "Introduction," in Lynn Smith (ed.), *Righting the Balance: Canada's New Equality Rights* (Saskatoon: Human Rights Reporter Inc., 1986), p. viii-ix.
  21. Simone de Beauvoir, *The Second Sex*, translated and edited by H.M. Parshley (New York: Vintage Books, 1974).
  22. George Manuel and Michael Posluns, *The Fourth World: an Indian Reality* (Don Mills: Collier-Macmillan, 1974).

23. Harry W. Daniels, (ed.), *The Forgotten People: Métis and non-status Indian Land Claims* (Ottawa: Native Council of Canada, 1979).
24. Dave McKay, "The Non-People," mimeo, 1972, Indian Claims Commission collection, National Library of Canada.
25. James Arvaluk, "Canada's Forgotten Colony," Address to the Rotary Club of Ottawa, 5 January 1976, mimeo, p. 10.
26. Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Minister of Supply and Services, 1978).
27. Winnie Ng, "Immigrant Women: The Silent Partners of the Women's Movement," in Maureen Fitzgerald, et al., *Still Ain't Satisfied! Canadian Feminism Today* (Toronto: The Women's Press, 1982), p. 250.
28. The Federation of Francophones outside Quebec, *The Heirs of Lord Durham: Manifesto of a Vanishing People* (Ottawa; Federation of Francophones outside Quebec, 1978).
29. P.E. Trudeau, "Transcript of the Prime Minister's Remarks at the Vancouver Liberal Association Dinner, Seaforth Armories, Vancouver, B.C.," mimeo, p. 8 August 1969.
30. Women, of course, are not a numerical minority, nor are men a numerical majority. In terms of status, power, and self-perception, however, women are a minority and men a majority, rather in the same way that Quebec francophones used to see themselves as a majority-minority and Quebec anglophones as a minority-majority.
31. J. Stefan Dupré, "Canadian Constitutionalism and the Sequel to the Meech Lake/Langevin Accord," in Shugarman and Whitaker, (eds.), *Federalism and Political Community*, p. 245.
32. Turpel, "Aboriginal Peoples and the Canadian Charter," p. 23.
33. Cited in Jeremy Webber, "The Adjudication of Contested Social Values: Implications of Attitudinal Bias for the Appointment of Judges," mimeo, 14-15 September 1989, p. 4.
34. Madame Justice Bertha Wilson, "Will Women Judges Really Make a Difference?," the Fourth Annual Barbara Betcherman Memorial Lecture, Osgoode Hall Law School, 8 February 1990, mimeo, p. 19.
35. Sheila L. Martin and Kathleen E. Mahoney, (eds.), *Equality and Judicial Neutrality* (Toronto: Carswell, 1987), p. iii.
36. For example, a prominent and prolific feminist law professor recently argued that "the debate over feminist scholarship is about who may speak for other people and how the appropriation of experience can be legitimated in the process of constructing knowledge." Kathleen A. Lahey, "... Until Women Themselves have told all that they have to tell..." *Osgoode Hall Law Journal*, Vol. 23 (3) 1985, p. 525.
37. The literature is voluminous. An excellent survey of the issues is Bill Ashcroft, Gareth Griffiths, and Helen Tiffin, *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (London: Routledge, 1989). For a good case study see Margery Fee, "Why C.K. Stead didn't like Keri Hulme's *the bone people*: Who can write as Other?" *Australian and New Zealand Studies in Canada* 1 (1989),

- p. 11-32 for a discussion of whether "majority group members [can] speak as minority members, Whites as people of colour, men as women, intellectuals as working people.?" p. 11. For a Canadian contribution to the debate see Lenore-Keeshig-Tobias, "Stop stealing native stories." (*Globe*, 26 January 1990) Ms Keeshig-Tobias, an Ojibway poet, asserts that native stories written by whites or films produced by whites "amount to culture theft, the theft of voice."
38. James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge, MA: Harvard University Press, 1988), p. 256.
  39. Clifford, *Predicament of Culture*, p. 7.
  40. Clifford Geertz, *Works and Lives: The Anthropologist as Author* (Stanford: Stanford University Press, 1988), p. 133.
  41. Geertz, *Works and Lives*, p. 131.
  42. John Claydon, "International Human Rights Law and the Interpretation of the Canadian Charter of Rights and Freedoms," *Supreme Court Law Review* 4 (1982); Anne F. Bayefsky, "The Principle of Equality or Non-Discrimination in International Law: Implications for Equality Rights in the Charter," in Smith, (ed.), *Righting the Balance: Canada's New Equality Rights*.
  43. Centre for Human Rights, *Human Rights: Status of International Instruments* (New York: United Nations, 1987), p. 139.
  44. David R. Cameron, "Lord Durham Then and Now, 1989 Morton Lecture," delivered at Trent University, 17 May 1989, mimeo, p. 30.
  45. Mary Douglas, *How Institutions Think* (Syracuse: Syracuse University Press, 1986), p. 100.
  46. Quoted in George F. Kennan, "Witness," review of Timothy Garton Ash, *The Uses of Adversity: Essays on the Fate of Central Europe* in *The New York Review of Books*, 1 March 1990, p. 4.
  47. Lincoln, *Discourse and the Construction of Society*, p. 105.
  48. Samuel LaSelva, "Does the Canadian Charter of Rights and Freedoms Rest on a Mistake?" *Windsor Yearbook of Access to Justice* 8 (1988), p. 223.
  49. Unfortunately, I have been unable to trace this statement to a source more reliable than my own memory.
  50. J.A. Corry, *The Changing Conditions of Politics* (Toronto: University of Toronto Press, 1963).
  51. Jim MacPherson, "Litigating Equality Rights," in Smith, (ed.), *Righting the Balance*, p. 232.
  52. Lowell Murray, "The Process of Constitutional Change in Canada: The Lessons of Meech Lake," *Choices* (Halifax: Institute for Research on Public Policy, February 1988).
  53. See John W. Chapman and Alan Wertheimer, (eds.), *Majorities and Minorities* (New York: New York University Press, 1990) for a valuable discussion, primarily from an American perspective.

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## The Public's View of the Canadian Federation

*Michael Adams and Mary Jane Lennon*

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*George-Etienne Cartier, l'un des pères fondateurs de la Confédération, définissait le Canada avant toute chose comme une "nation politique". Il avait observé, en effet, que les quatre colonies britanniques à l'origine du Canada ne possédaient pas les autres caractéristiques qui, d'ordinaire, rassemblent un peuple à savoir, la religion, la langue, la culture ou une vision commune de l'avenir.*

*Les sondages réalisés par la firme Environics confirment très nettement que la nature centrifuge de la fédération canadienne est un fait dominant de la vie politique d'ici. Ces sondages ont révélé a) une inquiétude accrue à propos des questions relatives à l'unité nationale, b) un attachement moindre envers les symboles nationaux, c) une identification régionale croissante (dans la mesure où les Canadiens auraient davantage tendance à se percevoir avant tout comme citoyens de leur province plutôt que de leurs pays) et d) une prédilection des Canadiens pour leur gouvernement provincial. Ces sondages soulignent également une augmentation du sentiment d'aliénation régionale et une baisse du soutien accordé par les Canadiens à la politique de bilinguisme officiel.*

*Les auteurs abordent la mésaventure de l'Accord du lac Meech qu'ils perçoivent comme le symptôme d'une incapacité grandissante de notre système fédéral de gouvernement à s'ajuster aux nouvelles réalités auxquelles doit faire face le Canada. Ce chapitre traite aussi de la nécessité d'effectuer des réformes sur le plan des structures politiques et de mettre au point de nouveaux mécanismes en vue d'accroître la démocratie politique au pays.*

*Les conclusions de cet article proviennent essentiellement de deux sources: soit d'abord du Bulletin FOCUS CANADA — un sondage trimestriel effectué auprès de 2,000 Canadiens, existant depuis novembre 1976, et qui porte sur les affaires publiques — et du Système de suivi des courants socio-culturels (3SC), mis sur pied conjointement par Environics et son partenaire québécois, CROP inc., et qui renferme des données compilées depuis 1983.*

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George-Etienne Cartier, one of our fathers of Confederation, once described Canada as a "political nationality." The four British colonies, he observed,

lacked the other elements that usually bind people together, elements such as religion, language, culture, or a common vision for the future.

The centrifugal forces captured in Cartier's felicitous phrase a century ago are still very much with us. Today, thanks largely to the three year debate over the ill-fated Meech Lake Accord, Canadians are once again voicing concern about the state of the nation. On a broader scale, market capitalism, the computer, mass education and the communications media have transformed the way we look at the world and at ourselves.

The data on which we base these conclusions derive from several years of conducting wide-ranging surveys among thousands of Canadian adults, drawing particularly from two research studies: Environics' FOCUS CANADA Report, a quarterly survey of 2,000 Canadians on public policy issues, conducted since November 1976, and the 3SC Social Trends Monitor, which Environics has undertaken in association with our Quebec partners, CROP, Inc., and which contains tracking data from 1983.

What makes these surveys invaluable to an understanding of social values is their ability to track public attitudes over a period of time. This allows us as researchers to place changing values, attitudes and public priorities within a social, demographic and historical context.

Values are the ideals, the customs, the principles by which people govern their lives and which motivate their behaviour. Although these are the deepest, most enduring beliefs and the ones that are the slowest to change, they do evolve over time as the result of economic development, new technology, increasing knowledge and changing perceptions.

## THE CANADIAN SOCIAL CLIMATE IN THE 1990s

The baby boomers — those eight million Canadians born between 1947 and 1966 — who transformed the look of the marketplace in the 1980s, will be assuming many, if not most, of the leadership positions in the Canadian federation of the 1990s.

This generation has already demonstrated individualistic values, a willingness to experiment with new ideas, and a rejection of traditional roles. Looking towards the future, our data indicate that these values will shape Canadian culture into a less hierarchical and more flexible mould.

The 3SC Monitor has also found, in relation to this trend towards individualism, correspondingly strong trends towards individual self-confidence and the need to feel personally in control of one's own life. Canadians today are less fatalistic than previous generations and more likely to believe that they can be the authors of their own destiny.

Even a cursory glance at the daily newspaper will confirm the emergence of a new psychological affluence among groups once relegated to the periphery



of society. Canada's native peoples, women, ethnic and racial minorities, the disabled and handicapped, the elderly, victims of domestic violence and sexual abuse — these and many more are liberating themselves from the barriers of silence and stereotyping, demanding social justice, equal opportunity and personal sovereignty.

Today's Canadian believes that the individual can make a difference and is committed more than ever to creating and maintaining a certain "quality of life." This new social consciousness does not, however, herald a return to the altruistic idealism of the 1960s. Our data indicate that the social activists of the '90s are and will be motivated largely by perceived threats to their own personal happiness and well-being. They are seeing how other people's problems — such as alcoholism, drugs and homelessness — and even geographically distant activities — such as the burning of the Amazonian rainforests — can threaten the quality of their lives and they are demanding that "something be done."

Our most recent surveys also indicate that Canadians are starting to express a real desire for balance and for greater stability and calm. Their preoccupation with environmental problems and economic and constitutional uncertainty is making them feel that the quality of their lives is somehow under siege.

This need for balance does not signal, however, a return to the traditional lifestyles of the 1950s. The changes in attitudes and mores initiated during the social revolution of the 1960s have become part of the Canadian social fabric and they are here to stay.

But, this siege mentality may be causing us to look at our country — Canada — in ways that threaten our survival as a federation. Certainly, we are expressing concern for the future of our country in tones both plaintive and angry.

## CONCERN FOR THE FUTURE

Environics' FOCUS CANADA survey found that, between January and April of 1990, the percentages mentioning either French-English relations, the Meech Lake Accord or national unity as "the most important problem facing Canadians today" had more than doubled, to 16 percent. And this happened without any prompting from the interviewers.

A month later, in May 1990, a poll conducted by Environics on behalf of the *Toronto Star* and CTV News, found the proportions mentioning national unity issues had risen to 23 percent — an increase of seven points in just one month and an historic high for FOCUS CANADA surveys. (See Figure 5.1.)

In January 1990, FOCUS CANADA probed concern over national unity by asking Canadians: "Overall, would you say that Canada is more united than it was ten years ago, less united than it was or the same as it was ten years ago?" A near majority said "less united." Only two in ten said Canada is "more united"

today than it was a decade ago, on the eve of the May 1980 Quebec referendum on sovereignty-association.

## THE INCREASINGLY CENTRIFUGAL NATURE OF CANADIAN ATTITUDES

Public opinion polling shows, not only that Canadians are becoming increasingly concerned for the future of their country, but also that their attitudes have assumed an increasingly centrifugal nature over the past 15 years.

Comparisons of FOCUS CANADA data from 1985 and 1990, for instance, witness a decline in the importance Canadians attach to various symbols of the Canadian identity, such as the national anthem, the office of prime minister, multiculturalism, bilingualism, the Governor General, even hockey. The 1990 FOCUS CANADA data also confirm that there are dramatic differences among anglophone and francophone Canadians regarding their assessment of the role of each symbol in an expression of the "Canadian identity."

Two-thirds of Canadians in 1990 said the flag was very important to the national identity. Six in ten said the same of Canada's anthem, the prime minister, the RCMP and the North. Five in ten said they considered literature/music to be very important symbols. Only four in ten thought multiculturalism is a very important symbol. Three in ten said bilingualism, the CBC and hockey are very important symbols and only two in ten regarded the Governor General and the Queen as very important. One in ten thought Canadian football was a very important national symbol.

Anglophones were much more likely than francophones to say symbols such as the flag, the anthem, the prime minister, the RCMP, the North, multiculturalism, hockey, the Governor General, and the Queen are very important to the Canadian identity. For instance, seven in ten anglophones (compared to three in ten francophones) said the RCMP is a very important symbol. And anglophones were almost twice as likely as francophones to see hockey as an important symbol. Six in ten anglophones (compared to five in ten francophones) said the prime minister is very important to the Canadian identity.

On the other hand, when Canadians were asked about the value of bilingualism as a symbol of national identity, francophones were twice as likely as anglophones to say this is an important symbol. There was no difference between the two groups regarding the importance of the CBC.

FOCUS CANADA has also reported significant increases in regional identification, as measured by the question: "Do you feel you are more a citizen of Canada or more a citizen of this province?". Between 1980 and 1990, Environics found a 13 point drop in the proportion who identify more with Canada than with their province: from 62 percent in 1980 to 49 percent — less than a

majority — in 1990. And certainly there could be no better demonstration of the pre-eminence of regional identification than in the political drama surrounding the final unravelling of the Meech Lake Accord. Nor is increasing regional identification just a Quebec phenomenon. In fact, the growth in this movement is even stronger in Atlantic Canada, the West and Ontario. (See Figure 5.2.)

Earlier evidence of centrifugal tendencies in Canada was found in a 1988 FOCUS CANADA survey, which showed that, of 13 areas of government jurisdiction tracked since 1979, preference for federal control decreased in nine areas and increased in only one. The FOCUS CANADA survey that was in the field during June and July of 1990 found this trend holding. The proportion of Canadians who said they would like to see provincial powers increased was almost three times the proportion opting for an increase in federal powers.

Environics' polling also reveals clear evidence of regional alienation. In response to questions on "chequebook federalism," a plurality of 46 percent of those surveyed in May 1990 said they feel their province does not receive its fair share of federal spending. Only in Ontario did a large majority of Canadians express satisfaction with their share of the national pie. In the remaining regions — Quebec, the Atlantic provinces, the Prairies and British Columbia — majorities felt their province had been short-changed by federalism. (See Figure 5.3.)

Other Environics' polls show that nearly three-quarters of Canadians feel that the federal government does not treat all regions of Canada equally, but instead, favours one region over the others. The plurality identify Quebec, Ontario or central Canada generally as the "favoured children" of Confederation. Environics' polling also finds that majorities in every region and province believe that federal spending on regional economic development is "generally not put to good use." If perceived fairness and effectiveness are the measures of success, then chequebook federalism must surely be considered a questionable proposition.

Environics' polls also find Western Canada to be as alienated today as it was ten years ago during the era of FIRA, the NEP and a federal Liberal government with scant representation from that region. The January 1990 FOCUS CANADA survey found that almost nine in ten Westerners still feel "the West gets ignored in national politics because the political parties depend mostly on voters in Quebec and Ontario;" half feel the "western provinces have sufficient resources and industry to survive without the rest of Canada" and four in ten agree that the West "gets so few benefits from being part of Canada that they might as well go it on their own."

In Quebec, alienation is expressed in the form of growing support for sovereignty-association, which increased from 40 percent in the May 1980 referendum to 60 percent in May 1990. More specifically, support for sovereignty-association has increased 12 points just since January of this year. (See Figure 5.4.)

## THE TRUDEAU VISION AND CANADA'S TWO OFFICIAL LANGUAGES

Canadians also continue to be deeply divided on the issue of the country's two official languages. In the most recent surveys, conducted earlier this year, just half of Canadians support the policy of official bilingualism for all of Canada; this proportion is essentially unchanged from 1977 when Environics first asked the question. Only in Quebec is there solid majority support — eight in ten — for national bilingualism.

National support for provincial bilingualism, which started out at the majority level in 1977, has now dropped to less than half. Only in Quebec does a majority still support provincial bilingualism. Even so, the drop in Quebec support for this policy has been dramatic — from nine in ten in 1977 to six in ten in April 1990.

Environics polling conducted earlier this year shows that francophones and anglophones have very different perceptions of the status of Canada's linguistic minorities. The "two solitudes" have almost mirror-opposite views as to whether the rights of francophones are adequately protected outside Quebec and whether the rights of anglophones are adequately protected within Quebec. In each case, two-thirds or more of those in the majority official language group felt the rights of the minority language group are protected; less than a quarter of the minority group agree. In other words, there is widespread discontent over the status of linguistic minorities, but limited sympathy from members of the majority group for those who complain that their language rights are being abused. This absence of empathy does not bode well for the future of either Canada's official language policy or the peaceful cohabitation of the two "official" language groups. (See Figure 5.5.)

Environics' FOCUS CANADA survey has also found that francophones are twice as likely as anglophones to believe the French language will eventually disappear outside Quebec and are five times as likely to think French will eventually disappear even in Quebec.

When asked to choose between a bilingual Canada in which French and English are spoken across the country or a Canada in which French is spoken in Quebec and English in the rest of the country, Canadians are divided right down the middle: just under half support each point of view. Only in Quebec and among francophones and university graduates is there majority support for the "Trudeau vision" of a bilingual Canada from coast to coast.

## THE FAILURE OF THE MEECH LAKE CONSTITUTIONAL ACCORD

Acting in tandem with the centrifugal forces expressed in a declining identification with Canada and symbols of the Canadian identity, and decreasing support for bilingualism and regional economic policy, was widespread opposition to

the Meech Lake Accord. All combined together to set the context for Canada's current constitutional crisis.

In its May poll, Environics found that 46 percent of Canadians opposed the Meech Lake Accord. As the deadline for ratification approached and talk of a constitutional crisis escalated, support jumped to 35 percent, a significant increase since the previous survey in April 1990. (See Figure 5.6.)

Strong emotions, however, were still on the side of those who opposed the Accord. The 26 percent "strongly opposed" to the Accord in May were almost three times the nine percent who said they "strongly supported" the document. Only in Quebec did a slim majority support the Accord (51 percent); even here, however, the proportion strongly opposed (14 percent) was almost equal to the proportion strongly in favour (17 percent). Increases in support outside Quebec occurred largely in Ontario, a province that had already ratified the Accord. And everywhere, increased support came too little and too late. (See Figure 5.7.)

Environics' polling showed that many elements of the Accord were generally popular (provincial nomination of Supreme Court judges and senators and federal-provincial immigration agreements, for example). In fact, the May survey showed that support for the Accord increased substantially, from 35 to 48 percent, when the idea of Senate reform was included. This we interpret as clear evidence of Canadians' desire for Senate reform. (See Figure 5.8.)

However, the prospect of "special status" for Quebec, implied by the "distinct society" clause, became the "hot button" for a whole series of issues that have long fostered resentment within English Canada. First and foremost is widespread resentment towards Canada's official language policy. Added to this are the widely-held perceptions that Quebec receives more than its fair share of federal dollars, that it monopolizes the office of the prime minister and that it dominates the agenda of every federal government, whether that government be Liberal or Conservative.

English-Canadian rancour was exacerbated by Quebec's sign law, Bill 178, and by the federal government's awarding of the CF-18 jet fighter contract to Montreal instead of Winnipeg.

Equally important to Meech Lake's unravelling was the process of constitutional change adopted for the Accord. This process, in effect, denied everyone but Canada's eleven first ministers a substantive role in its development, review and ratification. The public consultations that occurred during the three year approval process were seen as inadequate and perfunctory, at best, and the brinkmanship displayed by the federal government at the June First Ministers' Conference — Prime Minister Mulroney's infamous "toss of the dice" — reduced the process, in the eyes of many, to farce.

The sour taste created by the present national mood has led Quebecers to consider sovereignty in numbers not even dreamed of by the separatists of the

1970s, and has led many English Canadians to adopt a stance of stubborn indifference.

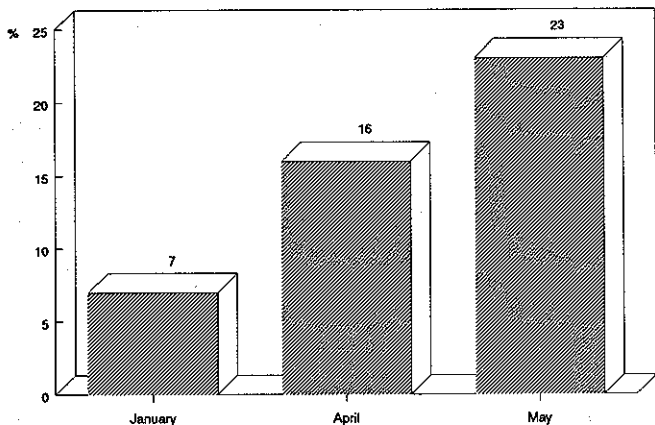
### THE NEED FOR NEW APPROACHES

We believe the failure of Meech Lake is merely a symptom of the more profound failure of our federal system of government to adapt to the new economic, technological and demographic realities confronting Canada. The north-south pull of economics, the global pull of telecommunications, Canada's new ethnic and racial realities — all are combining to undermine the nationally imposed French-English, east-west accommodations of the past 123 years. Inexorable market forces are undoing the ties that once bound Canada together.

Canada will need reformed political structures and more democratic processes if we are to keep this fragile federation together. And Canada, as a nation, must accommodate the individualism and pragmatism of a new generation. We must move towards, for example, an elected senate, a greater role for backbenchers in the public policy process, a blurring of partisan lines in government appointments and in approaches to problem solving. Our national decision-making processes are losing their legitimacy and their effectiveness. If we learn no other lesson from the debacle of Meech Lake, let it be a recognition that our traditional methods of problem solving — brokerage politics, elite accommodation, executive federalism — no longer work in a society that is better informed, more egalitarian and less deferential than ever before.

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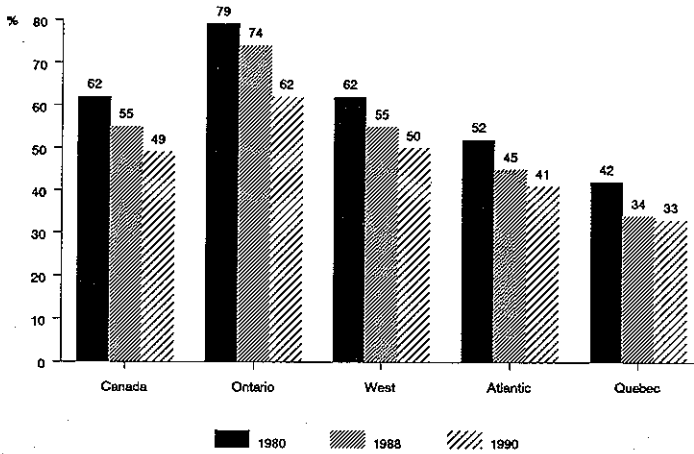
**Figure 5.1**  
National Unity Issues\*



**“In your opinion, what is the most important problem facing Canadians today?”**

\* Percentage of responses citing national unity issues

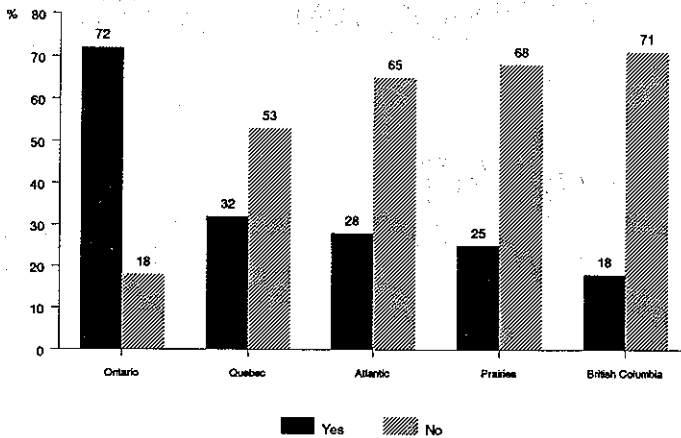
**Figure 5.2**  
Citizenship Identity\*



**“Do you feel you are more a citizen of Canada or more a citizen of this province?”**

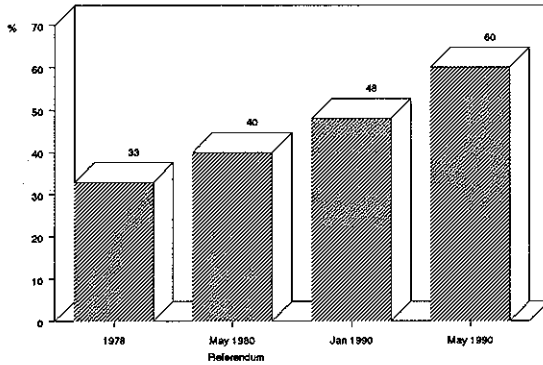
*\*Percentages saying they feel more a citizen of Canada.*

**Figure 5.3**  
Does Your Province Receive Its Fair Share of Federal Spending?



**“Compared to other provinces in Canada, do you think that your province does or does not receive its fair share of federal spending?”**

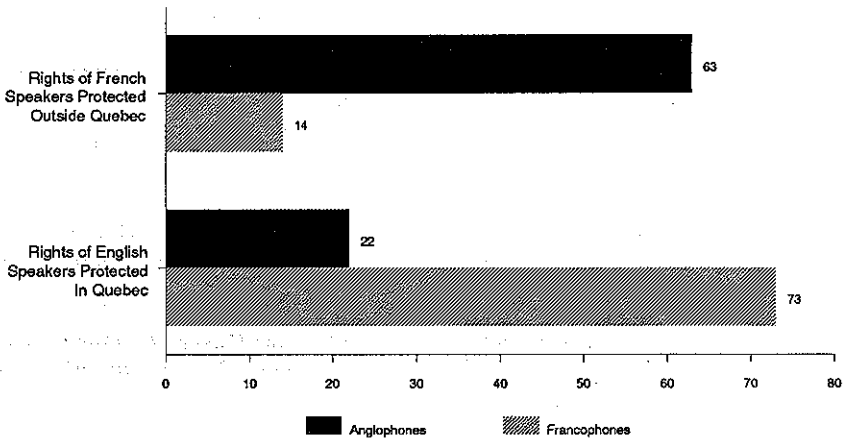
**Figure 5.4**  
Support for Sovereignty-Association for Quebec



**“Do you strongly favour, somewhat favour, somewhat oppose or strongly oppose Quebec becoming politically independent but having an economic association with the rest of Canada?”\***

*\*Asked by FOCUS CANADA surveys in 1978 and 1990.*

**Figure 5.5**  
The Two Solitudes



**“In your opinion...**

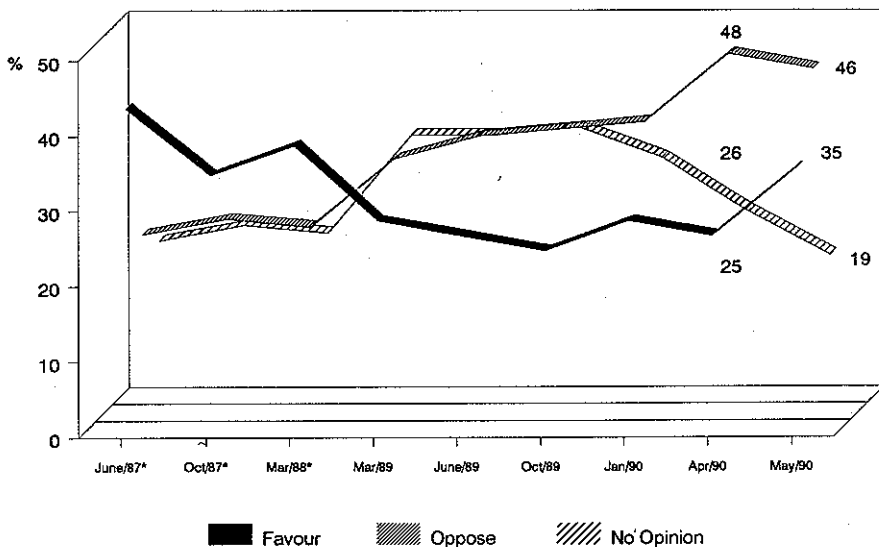
**a) are the rights of French-speaking Canadians outside Quebec adequately protected?**

**b) are the rights of English-speaking residents of Quebec adequately protected?”**



**Figure 5.6**  
The Meech Lake Accord

1987-1990



The June 1987, October 1987 and March 1988 surveys asked:

“Prime Minister Mulroney and the ten premiers negotiated an agreement that will bring Quebec into the constitution. In your opinion, is the Meech Lake Constitutional Accord a good deal or a bad deal for Canada?”

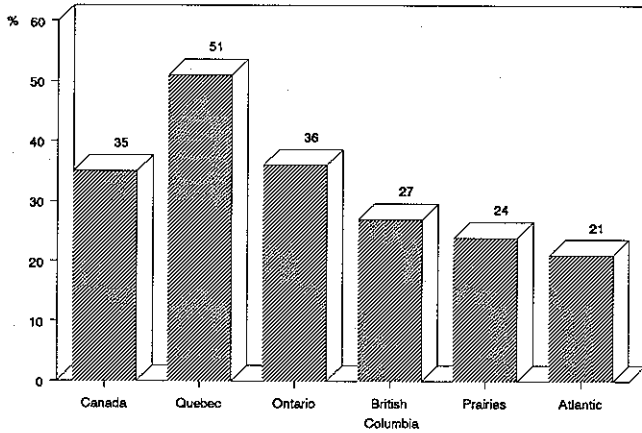
All 1989 and 1990 surveys asked:

“In 1987, the prime minister and the premiers negotiated the Meech Lake Constitutional Accord. Do you strongly favour, somewhat favour, somewhat oppose or strongly oppose this agreement?”

Note that we *dropped* the key phrase “that would bring Quebec into the Constitution” and changed the “good deal/bad deal” wording to “favour/oppose” wording.

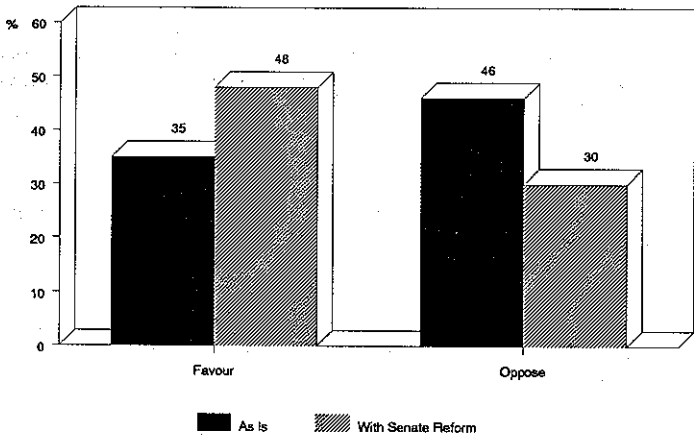
In June 1987, the findings were based on the subsample of respondents who said they had heard about the Accord (82 percent of the national sample).

**Figure 5.7**  
Meech Lake Support



**“In 1987, the prime minister and the premiers negotiated the Meech Lake Constitutional Accord. On the whole, do you strongly favour, somewhat favour, somewhat oppose or strongly oppose this agreement?”**

**Figure 5.8**  
Support for Meech Lake and Senate Reform



**“Some people think that reforming the Canadian Senate should be included in the agreement. If Senate reform were part of the Meech Lake Accord, would you strongly favour, somewhat favour, somewhat oppose, or strongly oppose the agreement?”**

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## Federal-Provincial Fiscal Arrangements: Is There an Agenda for the 1990s?

*Richard M. Bird*<sup>1</sup>

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*Compte tenu que la perspective des relations fiscales fédérales-provinciales dans les années '90 apparaît aussi incertaine que celle du Canada elle-même, cet article évitera donc de prédire, dans les moindres détails, l'ordre du jour de cette question. En revanche, on examinera certains aspects des trois grands programmes de transferts fédéraux-provinciaux, soit la péréquation, le Financement des programmes établis et le Régime d'assistance publique du Canada, qui pourraient faire l'objet éventuellement d'une révision au cours de la prochaine décennie. Par exemple, il apparaît vraisemblable que la capacité fiscale du gouvernement central au chapitre de la péréquation soit sensiblement réduite tandis que, s'agissant des deux autres programmes, les sempiternelles questions de la conditionnalité et du pouvoir fédéral de dépenser devraient continuer probablement de retenir l'attention. Qui plus est les contraintes budgétaires imposées par Ottawa, combinées à la nouvelle taxe sur les produits et services, accroîtront de toute évidence les inquiétudes relativement à l'harmonisation fiscale, tant entre les gouvernements provinciaux et fédéraux que parmi les gouvernements provinciaux. Cet article fait voir toutefois qu'on a habituellement tendance à exagérer ce type d'inquiétude et que le Canada est largement capable d'absorber une telle taxe à multiples facettes — quoi qu'en pensent plusieurs — et ce, indépendamment de l'évolution des rapports politiques entre le Québec et le Canada.*

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Federal-provincial fiscal arrangements are much more than an economic issue. How financial and administrative responsibilities are allocated between governments is a central political question. The answer to this question reflects a country's style, its concerns, and its goals. Social, political, and economic forces thus influence intergovernmental fiscal relations. Canada's present federal-provincial fiscal arrangements resulted from past changes in the balance of these forces. Only those with more faith in their crystal balls than I have would dare to forecast the precise nature of such changes in the future or to set out a specific agenda for federal-provincial fiscal arrangements in the 1990s.

The most immediate imponderable is of course the nature of post-Meech Lake Canada. Will a prolonged period of political uncertainty and continual negotiation ensue? Will Quebec separate? Will a new, looser federation be constructed?<sup>2</sup> Will Canada come to resemble the European Community more than the United States? Or will some parts of "Canada-that-was" seek to join the United States? Will the other provinces, whether or not Quebec remains in Canada, become more centralist or more decentralist in orientation? No one can know the answer to such fundamental questions — and it is hard to think of another country in which such drastic alternatives could be contemplated with such relative equanimity!

About all that can be said with certainty is that the 1990s are likely to see major shifts in the political forces that have shaped federal-provincial fiscal arrangements in the past. Moreover, since the distinctive position of Quebec has clearly been critical in determining many of the present arrangements, the future of Canadian federal finance is, in my opinion, inextricably entwined with the future course of Quebec in Canada — or out of it.

Important as it is, however, Meech Lake is by no means the only important influence on the future course of federal-provincial fiscal arrangements. As Boadway (1989) has noted, constitutional problems may arise from the potentially conflicting "individual" and "collective" notions of equalization enshrined in different parts of Section 36 of the constitution. At a more basic level, federal-provincial relations may take a turn for the worse if the political debate evolves in such a way as to sour Canadians on interregional transfers in general — as it were, to reduce their "span of caring" from a national to a provincial (or even narrower) perspective.

At least three important economic factors are also at play. The first, ably discussed by Boadway (1989), is the persistent federal deficit, and the strong temptation — to which the federal government has indeed already partly succumbed — to "solve" this problem by cutting back intergovernmental fiscal transfers, with an accompanying inevitable shift of tax "room" to the provincial level.

A second important factor is the Free Trade Agreement with the United States, which may over the next few years be extended *de facto* to encompass Mexico. Not only has this agreement inevitably weakened the somewhat artificial east-west economic bonds holding Canada together, but it may, over time, accentuate the strain imposed by the Meech Lake debate on the political bonds of mutual need and shared nationhood that underlie existing federal-provincial fiscal arrangements<sup>3</sup> — particularly if, as some fear, Canada is forced to retreat for competitive reasons from some of its social and regional policies.

The increased dependence on the United States implied by the Free Trade Agreement is just one aspect of the third important economic factor at play in the 1990s, namely, the increased dependence of Canada's prosperity on its

ability to compete effectively in the global economy. Here again the central question is the extent to which international economic forces will require us to keep taxes, and hence expenditures, down — as it were, to purchase the survival of the fittest at the expense of the less able. While such apocalyptic views of the prospective social (and political) effects of either the Free Trade Agreement or increased global competition seem largely unwarranted, I share the concern of those who think that yet another decade of gazing at our constitutional navel is all too likely to preclude our taking full advantage of the rapidly changing international economic scene.

The degree of uncertainty attached to factors such as those mentioned is so high that there seems little point in trying to set out a detailed agenda for federal-provincial fiscal arrangements in the 1990s. That agenda will largely set itself as these matters, for better or worse, work themselves out. Trying to forecast what *will* happen or to prescribe what *should* happen over the next decade is futile.

Instead, this chapter first undertakes the more modest task in the next section of setting out briefly the basic roles of intergovernmental fiscal transfers in any federation and placing the three principal transfer programs now existing in Canada — equalization, Established Programs Financing, and the Canada Assistance Plan — in this context. The following two sections then consider a few aspects of these programs that may give rise to problems in the future, assuming there are no fundamental changes in the federal structure. The last main section of this chapter then briefly discusses what may perhaps be the most contentious and important federal-provincial fiscal issue of the next decade — tax co-ordination. In this respect, as in others, the concluding section argues that Canada will reach an adequate resolution of its intergovernmental fiscal problems only when it adequately resolves the nature of its federal structure — something which it has as yet failed to do.

## THE ROLE AND DESIGN OF INTERGOVERNMENTAL TRANSFERS

Intergovernmental fiscal transfers serve several distinct roles in countries with decentralized governmental structures.<sup>4</sup> In the first place, such transfers constitute the principal means by which such countries achieve an acceptable degree of what may be called “vertical fiscal balance,” that is, ensure that the revenues and expenditures of each level of government are approximately equal.<sup>5</sup> Central governments usually have greater revenue-raising capacity than subnational governments both because it is easier for them to tax mobile factors and for historical reasons such as the extreme centralization of revenue-raising in Canada during the Second World War. Intergovernmental transfers are one

means by which the "excess" collections of the centre are transferred to finance the deficits of lower levels of government.<sup>6</sup>

This "fiscal gap" may of course be closed, and vertical fiscal balance restored, by transferring revenue-raising power to the provinces or by transferring responsibility for expenditures to the central government. Indeed, both paths have been followed in Canada at different times, with emphasis on the former in recent years as has recently been stressed by the finance ministers of the Western Provinces (Report, 1990). Nonetheless, the revenues and expenditures assigned to different levels of government remain sufficiently mismatched for intergovernmental fiscal transfers to play an important balancing role.

Two characteristics of this role of fiscal transfers deserve attention. First, *all* transfers from higher-level to lower-level governments help close the fiscal gap opened up by the original unbalanced assignment of expenditures and revenues. In particular, even though the genesis and development of Established Programs Financing (EPF) has been governed more by concern with equalization and the provision of national standards of service levels, as by far the largest single federal transfer program EPF is also the most important means by which vertical balance is restored in Canada. Although in principle transfers for this purpose should be unconditional in nature — and this is not entirely true of EPF — the most important characteristic of this program in this regard is simply its size. If the flow of EPF funds is reduced, something else — equalization, or the level of provincial taxes, or both — has to adjust to restore vertical balance in the long run.

Second, vertical fiscal balance may be said to be achieved when expenditures and revenues (including transfers) are balanced for the *richest* province, measured in terms of own-source resources. Since "rich" provinces do not receive equalization transfers, this again emphasizes the importance of the EPF transfers in this respect. Even if fiscal "balance" is achieved in this sense, of course, fiscal gaps will still remain for all poorer provinces. Moreover, such gaps will be accentuated if EPF transfers are cut. This problem, however, is more usefully thought of as one of achieving *horizontal* fiscal balance within the provincial sector.

This second problem of horizontal fiscal balance has attracted most attention both in the literature and in Canadian practice. "Equalization," as it is usually called, has proved a controversial policy objective, not least because it is a concept with many different interpretations. If, for example, horizontal fiscal balance is — rather improbably — interpreted in the "gap-filling" sense discussed above, what would seem to be implied is a level of (unconditional) transfers sufficient to equalize revenues (including transfers) and the *actual* expenditures of each local government. Such a policy goal makes no sense, however. Equalizing the actual outlays of provincial governments in per capita

terms (i.e., raising all to the level of the richest province) completely ignores differences in provincial preferences for different public-private sector mixes — and if there are no such differences, it is unclear why there are provinces in the first place! Even from a more centralized perspective, equalization in this sense is deficient because it ignores differences in provincial needs, costs, and revenue-raising capacities. Moreover, equalizing actual outlays would create an extreme disincentive both to revenue-raising effort and to expenditure restraint, since under this system those with the highest expenditures and the lowest taxes will get the largest grants.

Equalization payments are thus not intended either to equalize actual outlays or to finance whatever deficits recipient governments choose to run. Instead, such grants are intended to equalize the *capacity* of governments to provide a certain level of public services — if they chose to do so — by providing each recipient province with sufficient funds (own-source revenues plus grants) to deliver a (centrally) predetermined level of services.<sup>7</sup> Because equalization is based on measures of *potential* revenue-raising capacity, in principle no disincentive to fiscal effort is created.

On the other hand, differentials in the “need” for services or in the cost of providing services are also, for the most part, not explicitly taken into account.<sup>8</sup> Moreover, how equalizing such grants are depends entirely upon how the “standard” of services to be financed is set. Only if the standard revenue-raising capacity which the grant is intended to provide is set at the level of the *richest* province will full horizontal fiscal balance (full equalization), as defined above, be achieved. For any lower standard, such as that now used in Canada (see below), the disabilities of below-average provinces relative to those that are above average will remain.<sup>9</sup> The most critical elements of the equalization program are thus the measurement of capacity and the determination of the target level of equalization.<sup>10</sup>

In contrast to the general (unconditional) transfers discussed to this point, under a matching (conditional) transfer, the central government pays only part of the cost of certain expenditures carried out by provincial governments. Several rationales for such grants may be distinguished, each with different implications for the design of intergovernmental fiscal transfers.

The rationale with the strongest basis in the economic literature — if not in Canadian practice — for shared-cost transfers is that there may be interprovincial “spill-overs” of benefits from particular provincial expenditure programs to other provinces. Since there is no reason why such external benefits should be taken into account by any particular province in deciding how to spend the funds at its disposal, in general too little such “externality-intensive” activity will be undertaken — unless the province receives a unit subsidy just equal to the value at the margin of the spillover benefits. The correct matching rate, or the proportion of the total cost paid by the central government, is thus set by

the size of the spillovers. This rate may perhaps decline as the level of expenditure rises if the external benefits diminish. Conceivably, it may also vary across provinces if there are reasons for greater central government interest in some places than in others or if there is some reason to expect a higher price elasticity of demand for the service in question in some areas. As a rule, however, matching grants designed to encourage the optimal provision of public services would be expected to vary primarily with the nature of the activity, in accordance with the level of associated externalities.

The trouble with such neat economic reasoning is simply that no one, anywhere, has any idea of the magnitude of spillovers associated with particular services. At most, therefore, this approach may provide a rationale for central government support of, say, expenditures related to mobile people (such as health, education, and welfare): it can never say *how much* support is needed. It is therefore unsurprising that in practice one usually ends up with something like the 50 percent matching ratio applied in Canada's major remaining conditional grant, the Canada Assistance Plan (CAP).

A quite different rationale for matching grants may arise from the existence of a federal government budget constraint. If for any reason the federal government wishes to use its scarce budgetary resources as efficiently as possible to attain given standards of expenditure with respect to certain services constitutionally provided by provincial governments, it should pay only as much of the cost as is needed to induce each province to provide that level of service. From this perspective, the optimal way to allocate federal transfers among provinces is inversely to the price elasticity of demand for the service (assuming no cross-price elasticity effects). In practice, however, it is almost as difficult to estimate the relevant price elasticities as to measure spillovers. All grants have income effects, and all grants for specific activities have price effects, but in reality we have little idea of the size of either the income or the price elasticities of demand for local public goods.<sup>11</sup>

Nonetheless, despite this serious practical problem, a plausible argument may be constructed to the effect that matching grants should be inversely correlated to the income level of the recipient government. The argument begins from the reasonable premise that a major purpose of a grant program such as the CAP is to ensure that provinces can provide a similar level of the aided services independent of their ability to pay. The principal differences from the general equalization arguments discussed earlier are (1) that specific services are designated, perhaps because they are thought to entail spillovers, perhaps because they are considered especially "meritorious," (2) that the specific level of service to be provided is also determined, and (3) that payment is conditional on that level of the specified services in fact being provided. The idea is simply to set the price of the service in such a way as to neutralize differences in capacity by varying the matching rate.



Since Canada has certainly not achieved full equalization of provincial fiscal capacities,<sup>12</sup> a uniform matching level (as in CAP) which offers, in effect, the same "price" to different provinces, in reality discriminates against poor regions. The higher the income elasticity, the higher the matching rate needed for low-income recipients (to offset the higher provincial expenditures on the aided service in higher-income areas), and the higher the price elasticity, the lower the matching rate needed to achieve a given level of total expenditures. What this suggests is that the matching rate should vary inversely with income levels even when matching grants are considered solely as an incentive scheme, ignoring their distributional effects. Before 1977 the EPF transfers for health essentially worked this way, although no doubt this equalizing element was included more for reasons of horizontal fiscal balance than for reasons of economic efficiency.<sup>13</sup> In contrast, neither the education component of the EPF transfer nor the CAP program have ever had such an "equalization-efficiency" feature.

Matching grants like CAP (or the old EPF) may have important economic and fiscal advantages in terms of both allocative efficiency (spillovers) and the efficient use of scarce central government resources to attain (federally) desired levels of certain provincial services. In addition, while of course conditional transfers render provincial governments more susceptible to federal influence and control than do general equalization payments, such transfers have what some may consider the important political advantage of introducing an element of explicit provincial involvement, commitment, accountability, and responsibility for the aided activities. Moreover, as just argued, properly-designed matching grants may contribute both to equalization (horizontal fiscal balance) and more explicitly redistributive goals — as well as, like all other transfers, helping to resolve the basic fiscal mismatch (vertical fiscal balance) problem mentioned at the beginning of this section.

Indeed, although the three major federal-provincial transfer programs in Canada — EPF, equalization, and CAP — have been broadly categorized above as serving the three major objectives of vertical fiscal balance, horizontal fiscal balance, and economic efficiency respectively, in practice each of these programs to some extent attempts to further each objective. EPF, for instance, still contains some important equalization elements and in recent years has regained some of its conditionality (if, indeed, it had ever lost it). Similarly, impressive arguments for the equity and efficiency effects of a properly-designed equalization program may be found in the literature (Boadway and Flatters, 1982). The "triple threat" nature of CAP was sketched above. Given the uncertainty surrounding all these issues, it may well be better even in narrowly economic terms to have several multi-purpose transfers rather than narrowly targeting each transfer on a single objective. It may also be sensible to have generally simple matching formulas, as in Canada (apart from equalization), rather than

such complex ones as in, say, Australia or Switzerland (Bird, 1986). Nonetheless, problems remain with each of the main existing federal-provincial transfer programs, as hinted above and developed a little further in the next two sections.

### EQUALIZATION: IS ALL WELL THAT ENDS WELL?

Like much else in Canadian federalism, the basic idea of "equalization" can be traced back to Confederation, when the provision of equal per capita subsidies to the provinces was assumed to put them in essentially equal fiscal positions. This notion quickly proved to be mistaken, however, and for the next 70 years various patchwork alterations were made from time to time to the federal financial framework in an attempt to address the more egregious regional inequalities that emerged.<sup>14</sup> It was not until the crisis of the 1930s, however, that the Rowell-Sirois commission set out what was to become the underlying credo of Canadian federal-provincial financial arrangements. In the Commission's words, grants should be

...given when a province cannot supply average standards of certain specified services without greater than average taxation, but the province is free to determine on what services the grants will be spent, or whether they will be used not to improve services but to reduce provincial (and municipal) taxation.<sup>15</sup>

The emphasis in this quotation on the unconditionality of the grants and the "national average" standard has since remained central to Canada's equalization program, as has the argument that there should be no penalty for reductions in tax effort.<sup>16</sup>

Although the Rowell-Sirois proposal was never enacted, its influence was apparent in 1957 when the first explicit federal-provincial equalization program was introduced in Canada. In that year, the federal government agreed for the first time to pay each province an amount that would bring its per capita yield from three specified taxes (personal and corporate income taxes and succession duties) up to the average yield of the two wealthiest provinces (then British Columbia and Ontario).<sup>17</sup> Unlike the present system, where equalization "entitlements" — though paid entirely out of federal revenues — are based on the revenues *actually* collected by all provinces from the revenues included in the equalization base, this early version of equalization calculated entitlements by applying *hypothetical* "standard" rates to the chosen revenue sources.

Since 1957, there have of course been many changes in the equalization formula, with the most fundamental change occurring in 1967 when the so-called "representative tax system" (RTS) approach to estimating the revenue-raising capacity of provinces was introduced. Most recently, the 1982 formula (which was basically renewed unchanged in 1987) resolved some of the untidiness that had emerged over the intervening years by introducing a new "capacity" measure known as the "representative five province standard." For each of

the 37 revenue categories now distinguished in the equalization formula, the "national average tax rate" is applied to each province's own tax base to determine its potential yield ("fiscal capacity"). This figure is compared to the revenue that would have been generated by the application of the national average tax rate to the average per capita base in five "representative" provinces. The five provinces included in this standard are Quebec, Ontario, Manitoba, Saskatchewan, and B.C.: rich Alberta and the poor Atlantic region are thus excluded.

Including Ontario in this "standard" essentially serves the purpose of ensuring that it will not be a recipient province. Excluding Alberta serves much the same purpose as did the various arbitrary "caps" and limitations on the equalization of resource revenues that had crept into the formula following the oil price rises of the 1970s. All resource revenues can now be included in the equalization formula without the need for such arbitrary restrictions. Moreover, the exclusion of Alberta has the added benefit (at least from the perspective of the federal budget, if not necessarily from the point of view of the objective of equalization as originally stated by the Rowell-Sirois Commission) of largely excluding from equalization any increases in provincial-local expenditures (revenues) attributable to increases in Alberta's oil and gas revenues.

Yet another interesting development in 1982 was a provision "capping" the future growth of equalization payments to the cumulative rate of GNP growth after 1982. This introduction of an explicit "macro" element into the equalization formula was intended to limit the federal budgetary costs to which the program gives rise. This limit has since been followed by related "caps" on increases in the other large federal-provincial transfer programs, EPF and CAP.

Perhaps the most important development in 1982, however, was that equalization was at last formally enshrined in the Constitution in the following words:

Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation (the *Constitution Act, 1982*, subsection (2), Section 36 of Part III).

The continuing influence of the Rowell-Sirois proposal cited above is clear in this provision.

In summary, an explicit federal-provincial equalization program has existed since 1957. These payments are designed to equalize fiscal capacity by applying a "standard" rate of tax to the difference between a "standard" tax base and the actual tax base of the province. Over the last 30 years, changes to the equalization formula have included: (1) changes in the revenue bases equalized (increased from three to 37); (2) changes in the "standard" base to which the base of each province is compared (e.g., national average, two wealthiest provinces,

representative five-province standard); (3) changes in the "standard" tax rate (e.g., national average, a hypothetical standard); and (4) the introduction of various arbitrary methods of altering the outcome of applying the formula (partial inclusion of energy revenues, personal income override, GNP cap), when that outcome is, for some reason (e.g., benefiting Ontario, federal budgetary cost), considered undesirable.<sup>18</sup>

As mentioned earlier, the outcome of the formula is determined essentially by the standard of equalization and by how capacity is measured. With respect to the first of these points, it is clear that equalization is inadequate to attain full horizontal balance in the sense discussed earlier. To do so would require, in effect, a return to a standard closer to that first used in 1957 (the richest two provinces). Although the decreasing role played by EPF and CAP will put more pressure on the equalization system for the reasons mentioned earlier, moves in this direction seem unlikely to be high on anyone's agenda in the budget conscious 1990s. What may well come up for examination at some point, however, is the way in which fiscal capacity is currently measured in the equalization formula.

In principle, "fiscal capacity" means the resources a taxing jurisdiction can tax to raise revenues. Two approaches to measuring fiscal capacity may be found in the literature. The first approach employs such economic (or "macro") indicators as *income*, which reflect the ability of *individuals* to pay taxes, as the basis of such a measure. The second approach focuses on measures of *tax bases*, which reflect the resources available to *governments* to raise revenues. These two measures are, of course, related because revenues raised by governments are ultimately paid by individuals, but they may differ for many reasons, such as the possibility of "tax exporting."<sup>19</sup> Taxes collected from taxpayers in one jurisdiction may be "exported" in the form of higher prices or lower factor returns to other jurisdictions. In part for this reason, the RTS method of estimating capacity employed in the current equalization formula utilizes the second, or governmental, approach to the measurement of fiscal capacity. This approach is not without its own problems, however.

For example, one important question concerns the scope of the revenues to be taken into account in calculating the "potential" revenue base. Different studies (e.g., Advisory Commission, 1962, 1971, 1982) have resolved this issue in different ways at different times, as has the Canadian equalization system in practice. In principle, the base used for measuring capacity should be as broad as possible, given the substitutability and interdependence of different ways of raising revenue. Presumably in part for this reason, there has over time been a steady expansion in the number of bases taken into account in the Canadian equalization system, from three to 37.<sup>20</sup> Nonetheless, some major questions concerning the scope of the base would appear to remain open: for example, should *borrowing* be taken into account?

One might argue, for instance, that the borrowing capacity of a jurisdiction constitutes as real a component of its fiscal capacity as the tax capacity measured by the RTS approach. Moreover, as the efforts of bond rating services suggest, it is probably not much more difficult to measure than some items already included in the equalization base (e.g., the base for property taxes). Unless allowance is made for borrowing, the "true" capacity of some provinces will be misstated. A province with less stable, more volatile, revenue bases, which as a result at times depends largely on the generosity of others for its continued fiscal sustenance, has less borrowing capacity than an otherwise comparable province with a more stable revenue base.<sup>21</sup> The "unstable" province thus has less capacity to finance its own expenditures than indicated by point estimates of (partial) fiscal capacity.

The scope of the base used in measuring fiscal capacity is also important because (as in the case of borrowing) excluding some items from the base may render the comparison of relative capacity in different jurisdictions suspect. In effect, what the present approach does is to treat each of the 37 items included in the RTS base as independent, although for only 20 of the 37 items included in equalization are bases to be found in all provinces, and for 12 of these items there is no base in at least half the provinces. This approach is conceptually deficient in failing to recognize the interrelated nature of various tax bases. In effect, it assumes that different tax bases affect capacity in proportion to their revenue productivity. The possibility that the capacity to tax a given base may be affected by the size of another base is ignored. In reality, however, there are clearly trade-offs between different ways of raising revenues, and capacity measures based on a subset of revenues are not independent of what is excluded.

Moreover, the size of any particular tax base is not independent of the choice of tax rate. For example, differential property tax rates may be capitalized into property values. Under the RTS approach, the revenue that each jurisdiction would derive if it applied the national average rate is estimated. If a jurisdiction actually did apply those rates, however, the measured base would be different than it is. Thus, the RTS approach introduces a systematic bias into the measure of capacity: it understates the tax capacity for jurisdictions with above-average tax rates and overstates it for below-average rate jurisdictions.

Another question that arises with respect to defining an RTS base is how to calculate a "representative" system, that is, how to weight the bases included. The approach used in Canada essentially calculates arithmetically the average effective tax rate for each base in provinces actually imposing the tax. Two alternative approaches that might be followed are to apply an ideal or hypothetical tax structure (as was done in Canada's first stab at equalization in 1957) or to determine the appropriate tax rate by regressing revenues on some measures of potential tax bases (that is, estimating a mathematical equation that summarizes as efficiently as possible the relationship between tax revenues and

tax bases). Each of these alternatives has some important advantages over the RTS system.<sup>22</sup>

The regression approach, for example, has at least two significant advantages (Akin, 1973). The first is that, unlike the "arithmetic" averaging of the RTS approach, which treats each tax base independently, regression permits interdependence effects (between different bases, and between bases and rates) to be taken into account.<sup>23</sup> The second advantage arises from the fact that the regression approach, which directly estimates the relationship between bases and revenues at the margin, is clearly conceptually superior to the RTS approach (which in effect uses *averages* to derive *marginal* conclusions about the added revenues that would result from changes) because it takes into account the variation in total revenues as bases vary, rather than treating each base independently.<sup>24</sup>

These virtues of the regression approach have been unduly neglected in Canada, apparently because of the mistaken belief that the regression approach involves recourse to such so-called "macro" indicators as income, thus sliding over the line into measuring the tax "burden" on individuals rather than the tax "capacity" of governments. This inference is of course wrong, since in principle exactly the same bases may be used in either approach.<sup>25</sup> Perhaps the major disadvantage of the regression approach is that few politicians understand statistics, while most think they understand tax rates. But since, as the lack of discussion of issues such as those raised here perhaps suggests, no one really understands the present RTS system either, this disadvantage should perhaps not carry as much weight as it seems to do in Canada.

There are also substantial virtues in using explicitly "hypothetical" rather than actual average tax rates in deriving capacity measures. Again, these virtues are two in number (Tait and Eichengreen, 1978). First, such weights are less sensitive to changes in the mix of revenues: given the selection bias in the RTS noted above, this point is potentially important. In addition, it is simpler to derive meaningful intertemporal comparisons on this basis. Lest this point be considered unduly academic, note that the present RTS approach implicitly assumes that the elasticity of revenues with respect to changes in either (measured) bases or rates is *both* constant across all jurisdictions *and* equal to unity (Morgan, 1974). Since these assumptions are clearly incorrect, the present system may introduce substantial biases into capacity estimates over time. How to resolve this problem is by no means obvious, but in principle at least it would seem better to tackle the problem systematically, even if inevitably imperfectly, rather than letting the arithmetic do the thinking, which is what is really going on with the RTS approach, whether we realize it or not.

Moreover, the use in the present equalization formula of the average as a "representative" yardstick is problematical where budgets differ as a result of inherent economic differences: Newfoundland is not the same as Alberta! The

RTS approach to the measurement of fiscal capacity also fails to account for the fact that recipient jurisdictions may influence the grant by manipulating the size of the tax base and the measure of capacity. As Courchene (1984) has noted, there is thus at least a mild incentive for provinces to levy taxes on revenue sources for which they have fiscal deficiencies rather than for sources in which they have fiscal excesses. If a province's own tax rate is considerably lower than the national average tax rate, it can actually suffer a decrease in total revenues as a result of an increase in one of its tax bases. In other words, the equalization loss may more than offset the own-revenue gain.

Finally, the RTS approach to the measurement of fiscal capacity also fails to take into account the effects of differences in prices on the revenue side. Where prices are higher, it is necessary to earn a higher income to attain a comparable standard of living, thus artificially increasing the tax base. Higher prices lead to larger bases where bases are expressed in dollar figures. To obtain a comparable level of taxation, such bases should be deflated by the price differential, that is, by the ratio of the cost-of-living in the province relative to the cost-of-living in the rest of Canada.<sup>26</sup> If such an adjustment is not made, capacity estimates for all high cost regions will be too high.

Individually, each of the problems mentioned above may be minor. Moreover, in some instances any bias resulting from one of these factors may perhaps be offset by a bias resulting from another factor. On the whole, however, these arguments seem sufficiently important to suggest that it may be past time for reconsideration of the conceptual basis of the RTS approach to equalization in Canada. Nonetheless, so long as both federal and provincial governments seem content with the outcome of the present system, the wisest course of action for rational policy-makers might be not to raise such questions as those discussed above. The academic desire for logical consistency may carry little weight when assessed against the well-known maxim of successful politicians: "If it ain't broke, don't fix it!" The RTS approach to equalization is certainly less well-founded in logic than most Canadians seem to realize — it is more like a awkward, shambling camel than a neatly designed and graceful racehorse — but it is hardly "broke" and seems, like a camel, to get the job done in an acceptable fashion.<sup>27</sup> Absent crisis, equalization may therefore manage to hobble on as it is for another decade or two before rising very high on the federal-provincial fiscal agenda. It seems unlikely, however, that equalization payments will be increased sufficiently to offset the increased strains on federal-provincial relations already arising from federal pressures to reduce the two other large transfers, EPF and CAP, as evidenced by the recent report of the Western Finance Ministers (Report, 1990).

## EPF AND CAP: CONDITIONALITY REVISITED?

The rise, decline, and potential rise again of conditional federal-provincial transfers is one of the most interesting aspects of postwar Canadian federalism.<sup>28</sup> The conflicts that have surrounded the changing size and nature of these transfers reflect changes in attitudes towards the federal spending power, the shift of fiscal strength from one level of government to the other, and the degree of consensus prevailing at different times as to the importance of specific program areas. In particular, the role played by Quebec in this discussion has been central to shaping federal-provincial fiscal relations in Canada.

No area of federal-provincial relations has caused more dispute than education since the early 1950s when the federal Massey Commission and the Quebec Tremblay Commission in effect took diametrically opposed positions as to the federal role in education. As the Tremblay Report put the Quebec position:

What would be the use of a careful distribution of legislative powers, if one of the governments could get around it and to some extent, annul it by its taxation methods and its fashion of spending?...

In principle, every federal subsidy, especially if it tends to assume a permanent character, which is granted to an institution falling within the exclusive competence of the provinces affects that institution and constitutes an interference in its administration.<sup>29</sup>

In time, the federal government in effect recognized the essence of this criticism when in the 1960s it replaced the grants to universities it had introduced following the Massey Report with a reduction in federal income taxes, thus giving the provinces "tax room" to increase their own taxes and, if they so chose, their financing of universities. At first, however, additional cash payments were also provided to make up the total of such "tax transfers" and cash to an equivalent federal contribution of 50 percent of total provincial expenditures for post-secondary education.

In 1977, however, when these education transfers were folded in with the similar cost-sharing transfers for health (which had also been launched in a big way during the expansive 1960s) and labelled the Established Programs Financing Act (EPF), this system was fundamentally changed. In particular, the basis for federal cash payments was completely severed from actual provincial expenditures and linked instead to the growth of GNP. This system has continued to this day, though not without problems.

In 1984, for example, the federal government attempted to reassert its authority by providing explicitly for separate calculation of the cash and tax transfer elements of the education component of EPF as well as by imposing explicit limits on the increases in this component. Moreover, federal authorities made it clear they were not happy with either provincial expenditures for education — though the problem now was that they were not growing fast



enough, rather than too fast as in the days of the 50 percent sharing arrangement — or with the lack of recognition for the federal role in financing education. A federally-commissioned report subsequently reiterated and strengthened the implicit call for stronger federal conditions on education transfers (Johnson, 1985). Perhaps in recognition of Quebec's unwavering stance on this issue, however, no action has since been taken to follow up on these words.

In contrast, following in part the urging of another federal inquiry (Hall, 1980), in 1984 the *Canada Health Act* explicitly imposed certain restrictions on federal transfers related to health, thus in effect formally "reconditionalizing" to some extent part of the EPF transfer. Among other things, this Act imposed financial penalties in the form of reduced transfers to provinces that permitted extra billing and user fees. A number of provinces were then so penalized. Within a few years, all provinces had essentially fallen into line with the new Act. No problems arose with Quebec because it had in fact on its own led the way in conforming with what became the federal restrictions.

This reintroduction of conditionality into at least the health part of the EPF presumably represented an attempt by the federal government to reassert some control over the provinces without (as in the earlier open-ended cost-sharing arrangements) losing control over its own budget. Since 1986, however, federal emphasis has been more on controlling its own expenditures than on attempting, however fitfully, to influence those of the provinces. In 1987, for example, the rate of growth of EPF transfers was reduced to that of GNP less two percentage points and in 1990 (in addition to freezing the amount of the transfer for two years) to GNP less three percentage points. Nonetheless, Canadian attitudes to EPF (and CAP) transfers remain divided.<sup>30</sup>

Some consider this federal financing of provincial expenditures on health, education and welfare to be a triumph of "cooperative federalism" and an expression of the obvious national interest in ensuring all Canadians have equal access to these services. Others consider these programs to represent not only the negation of proper governmental accountability and true federalism but an unwarranted intrusion by the federal government into areas that are clearly provincial responsibilities. This dichotomy of views existed in the 1950s when these transfer programs were just beginning. It continues to exist today even though fiscal restraint has ensured that these programs will be of diminishing importance in the future.

In the end, as the Macdonald Royal Commission (1985) suggested, and as the recent Meech Lake debate reinforced, the central issue with respect to the EPF transfer remains the appropriate role and nature of the federal spending power. Since Meech Lake did not settle this issue, it seems likely to remain with us throughout the next decade — and perhaps as long as Canadian federalism exists. Moreover, as the Meech Lake debate perhaps suggests, this question may in the end be too important to be left solely to the vagaries of federal politics

and the shifting political influence in Ottawa of particular provincial governments. Of course, Meech Lake also demonstrated that many Canadians (and interest groups) are easily upset by the intrusion of constitutional purity into areas as central to their well-being as health, education, and welfare. Nonetheless, surely the present messy situation must eventually be straightened out in order to improve the accountability of the different levels of government to their respective constituents. The federal spending power may not appear explicitly on anyone's fiscal agenda for the 1990s given the present emphasis on fiscal retrenchment, but it will certainly be there in spirit, especially since it can be argued that the 1982 Constitution, by strengthening the spending power, favours federal intrusion into provincial areas.

Indeed, this issue may first come to a head with respect to the third great area for federal transfers, welfare, where the remarkably tranquil existence of the Canada Assistance Plan (CAP) may be coming to an end. In what may be the opening move in a campaign to reduce the "open-endedness" of this last explicit cost-sharing program, the recent federal budget for the first time attempted to cap the federal contribution to CAP. Many of the issues discussed in recent years with respect to the EPF transfers thus seem likely to surface in the near future with respect to CAP. Moreover, as emphasized earlier, the rationale for the present uniform 50 percent matching ratio in this program seems questionable in principle. About all that can be predicted for the 1990s, however, is that CAP's quiet days are probably over. In this era of fiscal restraint and renewed strains on the fabric of the federation, the level and structure of CAP payments are, for better or for worse, just as much up for grabs as are all of the other federal-provincial transfers.

CAP growth was limited in 1990 to 5 percent for provinces not receiving equalization payments. British Columbia (one of the affected provinces) challenged this action and won when the BC Court of Appeals ruled that the federal government could not unilaterally breach the CAP agreement. The federal government has announced that it will appeal to the Supreme Court of Canada. The significance of this case may be far-reaching. As argued in a recent submission by the Western Ministers of Finance (Report, 1990), perhaps the key question confronting federal-provincial fiscal arrangements in Canada is whether future changes will be determined jointly by the federal and provincial governments or, as has been the case in the past, largely unilaterally by the federal government. I shall return to this point at the end of the next section.

### IS TAX HARMONIZATION A GOOD THING?

The heading of this section raises a broad and controversial question. Moreover, it is a question which I have discussed at length elsewhere (Bird, 1984).<sup>31</sup> All I can do here is to raise a few key points. First, although Canadians seem fond

of worrying about fiscal and other barriers to interprovincial trade and comparing themselves adversely to Europe in this respect, it should be emphasized that it makes little sense to compare economic unions (such as the European Community, or EC) and federations with respect to tax harmonization as though they can be arrayed along a single continuum. There are two related but quite separate dimensions of integration, economic and political. These dimensions come together at the extremes: at one end, two totally unrelated states; at the other, a single politically unified and economically integrated state. In between, however, there are many possible degrees of economic and political integration, and no necessary connection between the two.

It is thus possible for an economic union such as the EC to be more "integrated" in some respects than a political union such as Canada. This does not mean that the former is more united than the latter, or that the latter is somehow failing. All such differences show is that the multiple and often conflicting objectives within the two unions and the different policy instruments at their disposal have led to a different policy choice in one than in the other. Similarly, the fact that one federation (e.g., Germany) has a similar tax system in all states while another (e.g., Switzerland) does not, does not mean the first is necessarily more unified, economically or politically, than the second. Nor does a change in one direction or another in a particular country necessarily imply any fundamental change. Judgements in this respect must take into account not only the entire array of federal financial relations — the assignment of taxes and expenditures, the size and nature of intergovernmental transfers, and so on — but also the manner in which the multiple policy objectives of provincial and federal governments can best be achieved in a setting constrained by both constitutional and economic limitations on policy instruments.

The clearest conclusion emerging from an examination of fiscal arrangements in federations around the world (Bird, 1989) is how very differently the tax harmonization "problem" has been resolved in different countries. Tax harmonization is not a problem in either Australia or Germany, for example, because in the former the states have no important taxing powers and in the latter all major taxes are applied uniformly and shared. On the other hand, there has been much more discussion of harmonization in countries such as the United States and Switzerland than in Canada. This is primarily because the most visible of taxes, the personal income tax, is levied almost uniformly throughout Canada, with even Quebec not deviating much from the federal pattern.

Nonetheless, there are fairly significant income tax rate differences between provinces and occasional pressures to "harmonize" for competitive reasons (as between Quebec and Ontario). Deviations from the federal pattern are greater in the case of the provincial corporate income taxes, and some economists have

become quite agitated about the resultant distortions to competition. Again, however, these differences — especially in the tax base — are much less than those in, say, the United States or Switzerland, to mention only two countries that have managed to survive considerable tax “disharmony.” And finally, of course, the impending federal move into the retail sales level with the Goods and Services Tax raises the prospect not only of useless duplication of collection agencies but of exacerbated federal-provincial conflict in the indirect tax field. Once again, however, there seems little reason to be overly concerned with interprovincial conflicts in this area: Canada’s geography has already enabled it to survive the gap between a 12 percent sales tax in Newfoundland and no sales tax at all in Alberta.

In any case, to repeat the first and most important point of this section, viable federations can and do exist with all varieties of tax systems, ranging from virtual uniformity to total disarray. No correlation exists between the degree of tax “harmony” in different federal countries and either the policy salience of the tax harmonization issue or the degree of political and economic unity: Is the United States really less united than Canada? In contrast, if one considers the European Community, it is clear that tax harmonization has long been an important issue and a major policy concern. Is there some reason why this should be the case when economic bonds are more important than political ones? And, if so, are there any possible lessons for a Canada that may be moving in the opposite direction to the EC in these respects?

The member units of a federation invariably give up at least two basic tools of economic policy — control over tariffs and control over monetary and exchange rate policy. Fiscal policy, including tax policy, thus assumes a greater role in implementing governmental objectives, particularly where such objectives differ between units (and levels) of the federation. The potential importance of the allocative effects of subnational tax policy in the federal context has, of course, long been recognized. What has not been sufficiently emphasized, perhaps, is that tax policies may also help attain the distributional and stabilization objectives of subnational governments, where such objectives differ from those of the national governments. The relative openness of local economies may mean that their success in redistribution or stabilization is minimal. Nevertheless, if a country is “truly federal” in the sense that its component units can and do pursue independent social and economic policies, the main policy instruments available for this purpose are taxes and expenditures. Undue constraints on the freedom of provincial governments to use such instruments (apart from limiting their ability to export fiscal burdens and hence reduce accountability) thus cut at the very heart of federalism.

In contrast, in a purely economic union member states usually retain policy sovereignty over a wider range of regulatory instruments, including monetary policy. Of course, the more closely exchange rates are linked and the more

uniform the regulatory systems prevailing in such areas as transport, the more closely the situation approximates that in a "tight" federation, and the greater the task of policy differentiation falling on the fiscal system. Nonetheless, so long as an economic union is not a single political unit it seems reasonable to think that fiscal differences would constitute relatively more significant policy instruments in a federation than in a common market. Horizontal tax differences may thus represent not defects to be eliminated in the interests of a more perfect federation but rather recognition of the need for policy differentiation in a federal state. Moreover, in the typical federation — unlike a strictly economic union — the central government is much more important with respect to taxation, and federal-provincial negotiations on fiscal issues swamp in importance concerns about interprovincial fiscal relations. Finally, whether in a federation or a strictly economic union, the winds of competition tend to keep member units from getting too far out of line.

To a large extent, then, the attention paid to tax harmonization in a federal state tends to reflect "taste" rather than necessity. The observed degree of fiscal uniformity is more a reflection of the strength of the impulse to uniformity than an intrinsic necessity to achieve a more perfect union. Indeed, political unity at the national level may even *require* a degree of economic disunity if member units are to retain their "cultural sovereignty" (Switzerland) or their "national identity" (Canada). Such symbols of non-uniformity as independent fiscal policies seem particularly important in federations with regionally-based language groups such as Canada and Switzerland.<sup>32</sup> In contrast, in economic unions like the EC in which at least some members would also like to see stronger political bonds, the extent to which there is uniformity in tax (and other) policies may be the focus of more discussion.<sup>33</sup>

If these arguments have any merit, the future of tax harmonization in the revised Canadian federation that seems likely to emerge in the 1990s is unclear. If Quebec becomes more independent but remains in the federation, its greater sovereignty might well be reflected in a more independent (unharmonized) fiscal system. On the other hand, if one price paid for such increased provincial independence is substantial weakening of the ability of the federal government to redistribute income through federal-provincial transfer programs — a fear expressed by Boadway (1989), for example — the pressure for explicit inter-provincial fiscal harmonization to reduce regional strains may even be increased.

If Quebec and Canada were to separate completely politically, but remain associated in either some form of economic union (or perhaps just as members of the emerging North American Free Trade Area), matters are again not very clear. As in federations, identical tax systems are neither necessary nor particularly desirable in an economic union in which member states have different policy objectives and different economic conditions. In a sense,

therefore, the degree of tax harmonization will remain more a matter of taste than of necessity. Even the increased competitive pressure that would be felt in states no longer (in effect) shielded by vertically redistributive policies need not compel fiscal uniformity. On the contrary, the greater need to provide policy "room to breathe" may make the so-called "differential" approach to tax harmonization — which means explicit recognition that *non-uniform* tax policies are generally needed for efficiency — as dominant in practice as it has long been in theory (Dosser, 1967; Bird, 1984). But this may be too idealistic, given that the harmonization discussion in Canada has long been conducted as if "harmonization" was merely a fancy way of saying "uniformity." Nevertheless, the 1990s will likely see increased discussion of these issues both because of the new federal sales tax and the likelihood of a redefined role for Quebec, whether in or out of Canada.

The point of this section is certainly not that the present Tax Collection Agreements are not worthwhile. On the contrary, these agreements may have many virtues in addition to the obvious saving in collection costs. The real issue in the tax harmonization discussion, however, is whether the federal government should be able unilaterally to determine the provincial tax base or whether it might be better to provide explicitly for the joint determination of the nature of this and other federal-provincial arrangements as is, for example, the rule in Germany (Bird, 1986). This argument is developed a bit further in the next section.

## CONCLUSION

To conclude the rather diverse set of topics touched on in this chapter, I would like to return to a theme I have emphasized in earlier work (Bird, 1986) that may at first seem to be quite unrelated to anything thus far said but which in fact, I think, sums up the basic fiscal malaise in Canadian federal-provincial relations. This theme is simply that the maintenance of confederation as we know it may be fundamentally incompatible with the maintenance of our strong form of parliamentary government. To illustrate this point, consider the case of Switzerland, the only well-functioning developed federal country with linguistically-differentiated states.<sup>34</sup>

As noted in passing in the last section, there is, on the whole, far more diversity in Swiss fiscal federalism than in the Canadian version.<sup>35</sup> The Swiss system has on the whole worked well over time in both political and economic terms because of the high degree of tolerance history has inculcated in the Swiss and the sort of elite accommodation described in consociational theories. Canadian society is clearly not as stable as Swiss society: nonetheless, we could learn much from the "unity in diversity" that characterizes the Swiss system.

As developed at length in Bird (1986), consensus and compromise is a necessity in a diverse nation. The costs of attaining consensus may, as we have just seen in the Meech Lake debate, be high; but the costs of not attaining it may well turn out to be higher. It will always be more difficult, more costly, and more apparently wasteful to do things in a federal than in a unitary state — and the more so the “looser” the federation. But this does not mean that the right things will not get done as efficiently as possible in the circumstances, or that a more authoritarian (centralist) approach will produce “better” outcomes. The Canadian political system with its pluralistic majorities, its strong parliamentary executive governments, and its lack of formal representation of provincial interests in federal politics is very different indeed from the Swiss system and, superficially, more consistent with “getting things done.” The latter, however, seems more consistent with the maintenance of a viable diverse nation over time.

Whether and to what extent Canada can or should move away from its traditionally strong form of the British parliamentary system toward a more institutionalized form of regional representation, whether in the form of a “Triple E” senate or whatever, cannot be discussed here. Nonetheless, my examination of Swiss experience with respect to fiscal matters suggests that such changes might show that some of the problems and solutions often discussed in Canada are being viewed through the wrong end of the telescope. Tax diversity, for example, may in fact be the solution to a real problem in a diverse federation, while the “solution” of imposed tax uniformity would likely accentuate federal-provincial tensions.

Fiscal arrangements constitute an important component of any federal system. Changes in these arrangements reflect, and may sometimes induce, changes in that system. In the end, however, a federation is inherently a political creation with primarily political objectives, and its fiscal arrangements must be viewed within this political framework. The two most critical factors in federal-provincial fiscal relations, therefore, are who determines the rules of the game and how are these rules changed: all else follows. In the end, just as the federal-provincial fiscal agenda of the 1990s will largely be set outside the narrow parameters of public finance, so the most important decisions affecting the outcome of federal-provincial interaction in the fiscal sphere will be those concerning such matters as the composition and role of the Senate rather than new twists in the equalization formula or the details of federal budget-cutting exercises, important though the latter may seem in the days and years to come.

## NOTES

1. I am grateful to an anonymous referee for comments with which I mostly disagreed but which have, I hope, led me to state more clearly what I am doing (and not doing) in this chapter.

2. On the distinction between "tight" and "loose" federations, see Musgrave, Musgrave and Bird (1987), pp. 478-79.
3. For a useful discussion of these arguments, see Courchene (1984), pp. 87-90.
4. As noted above, the purpose of this section is simply to provide a general framework within which some of the particular features of the Canadian system can be discussed: it does not purport to be either a full or an accurate account of why federal-provincial fiscal arrangements in Canada are as they are.
5. Any overall deficit remaining after this process is generally at the level of the central government, which can, at least in principle, finance it most readily from domestic and external sources.
6. Because in Canada federal-provincial transfers in aggregate roughly equal provincial-municipal transfers, in a sense the federal government finances municipal deficits. Since, however, the allocation of provincial and municipal finances and functions is clearly in the hands of the provinces, we shall henceforth simply treat municipalities as part of provincial governments.
7. This goal is often discussed in Canada under the label of "fiscal equity." Such discussion dates back at least to Buchanan's (1950) seminal paper, with significant Canadian contributions from such authors as Graham (1964) and Boadway and Flatters (1982). I have deliberately chosen to de-emphasize this approach here, however, because I want to bring out some other considerations that have been less thoroughly explored in the Canadian literature.

Indeed a principal argument in this chapter as a whole is that the intellectual framework within which most of us discuss federal-provincial fiscal institutions is by no means beyond question. To illustrate, a recent U.S. commentator (Thomassen, 1990) refers rather disparagingly to another author's "belief" in Buchanan's "uni-dimensional" version of horizontal inequity, asserts that measuring fiscal capacity by "empirical proxies" (such as RTS) ignores the critical dependence of this concept on benefits, and concludes that there are "a host of issues needing settlement before fiscal capacity measures should be welcomed into formula allocations." Such arguments may seem like heresy to those steeped in Canadian fiscal institutions, but they should serve to make the point that there are other legitimate ways to look at these matters than those that have become conventional wisdom in Canada.

8. In Australia, in contrast, an elaborate equalization system has been designed to take such variations into account (Bird, 1986). The only Canadian experience along these lines has been in connection with the "formula financing" system of the northern territories (Bird and Slack, 1989).
9. The only exception is when the positive transfers required to bring those below the average up to the average are financed by negative transfers from those above the average (as in the *finanzausgleich* of Germany: see Bird, 1986). No such effect occurs in Canada, since only recipient provinces are affected by equalization. More generally, the effects of any grant system are obviously determined in part by how the grants are financed, but this important question cannot be discussed further here.



10. Note that, if reduced EPF transfers are partially offset by increased taxes in the richer provinces as suggested above, a greater burden will be put on the equalization program in the poor provinces regardless of the target level of equalization.
11. The estimates obtained in econometric studies are critically dependent on the models used. Most such estimates in the literature are based on the singularly inappropriate median voter model, which leaves out of account both the fact that governments do more than one thing at a time and the entire "supply" (political-bureaucratic) side of the public sector.
12. See, for example, the estimates discussed in Musgrave, Musgrave, and Bird (1986), pp. 513-15.
13. The hospital insurance component of the transfer was calculated as 25 percent of the national average per capita cost of in-patient services and 25 percent of the provincial per capita cost. The medical component was even more equalizing, providing 50 percent of the national average per capita cost of providing insured services times the provincial population. At the margin, however, these grants had little incentive effect (Kapsalis, 1982).
14. This section is largely based on Bird and Slack (1989), which in turn draws on Courchene (1984) and other standard references.
15. Royal Commission (1940), Book II, p. 127. Much the same view on equalization — but without the explicit recognition of the legitimacy of provinces choosing to reduce taxes — was stated by the then federal Minister of Finance, Mitchell Sharp, in a statement to the Federal-Provincial Tax Structure Committee: "The fiscal arrangements should, through a system of equalization grants, enable each province to provide an adequate level of public services without resort to rates of taxation substantially higher than those of the provinces" (Cited in Robinson and Cutt (1968, p. 111)
16. Although the Commission's proposal explicitly allowed for the evaluation of expenditure needs, this factor has subsequently only been taken into account in the northern territories. Interestingly, however, the revised territorial financing formula which took effect in 1990 deviates from both the Rowell-Sirois and the equalization grant patterns by explicitly including a "tax effort" factor.
17. The three taxes included in this original formula were those which had been turned over to the federal government under the wartime "tax rental" agreements.
18. Bird (1986), noting similar formula "manipulation" in a number of federations (e.g., Switzerland, Australia), suggests that what matters most in an equalization system is not the logic of the formula but rather the acceptability of the *results* of its application to the parties concerned (the federal and provincial governments). If results deviate from expectations, the formula gets changed. Canadian experience with the equalization formula seems to conform to this dictum.
19. For estimates suggesting that this phenomenon is not unimportant in Canada, see Ballentine and Thirsk (1980).
20. Of course, much of this increase has resulted from subdividing tax bases that were already included in the formula.
21. An alternative approach would consider borrowing just as a precommitment of future taxes and therefore in a sense as already encompassed in tax capacity. This

approach, however, neglects the critical issue of variability over time: a province with a less stable revenue base may have more need to borrow in order to "smooth" tax rates over time (as may be desirable for efficiency reasons) but it will also have less ability to do so because of the higher risk attached to repayment.

22. Incidentally, it is important to understand that in principle the underlying measure of "capacity" is the *same* in both the arithmetical (RTS) approach and in the statistical (regression) approach (Bahl, 1972). This point is developed at more length in Bird and Slack (1989).
23. This defect of the RTS approach has recently been stressed by Aten (1986).
24. In an empirical comparison of the two approaches for U.S. states, Akin (1973) found that using the different methods of estimation for the *same* tax bases significantly altered the estimated capacity of 20 of the 51 states (including the District of Columbia).
25. It may be, however, that in a well-specified regression analysis such general economic indicators as, say, the level of business activity would play a larger role and some of the more detailed "bases" incorporated in the present RTS approach a smaller role. It should be noted in any case that the "bases" measured in the present RTS approach are for the most part *not* in fact the real tax bases used in any jurisdiction, let alone an average of such tax bases, but rather an elaborate set of proxies.
26. The potential importance of this correction with respect to the provinces is indicated by Dean (1988).
27. In this connection, see note 18 above.
28. This section draws heavily on Bird (1987).
29. Cited in Kwavnick (1973), pp. 177-78.
30. See, for example, the illuminating discussion in Courchene, Conklin, and Cook (1985).
31. Bird (1984) stresses the interdependence of federal-provincial tax arrangements and federal-provincial fiscal transfers, a subject that is not discussed here. The presentation here draws more heavily on a subsequent treatment in Bird (1989).
32. For a detailed discussion of the Swiss case, see Duss and Bird (1983).
33. This point is developed further in Bird (1987a, 1989).
34. The following argument in part reproduces some passages in the conclusion of Bird (1986) which seem to me to be even more relevant in the wake of Meech Lake than when I wrote them.
35. Some years ago I wrote a paper with a colleague on Switzerland's "tax jungle" (Duss and Bird, 1983). Although this paper has been occasionally cited in subsequent Canadian discussion, most people do not seem to have realized that the words in quotes are intended ironically and that the point of the paper is that the much greater fiscal diversity found in Switzerland is something which could with profit be imitated in Canada — if, that is, we are sincere about maintaining separate provincial "identities" (as Quebec demonstrably is).

## REFERENCES

- Advisory Commission on Intergovernmental Relations (1962) *Measures of State and Local Fiscal Capacity and Tax Effort*. A Staff Report M-16 (Washington, D.C.).
- Advisory Commission on Intergovernmental Relations (1971) *Measuring the Fiscal Capacity and Effort of State and Local Areas*. An Information Report M-58 (Washington, D.C.).
- Advisory Commission on Intergovernmental Relations (1982) *Tax Capacity of the Fifty States: Methodology and Estimates*. An Information Report M-134 (Washington, D.C.).
- Akin, J.S. (1973) "Fiscal Capacity and the Estimation Method of the Advisory Commission on Intergovernmental Relations," *National Tax Journal*, 26: 193-204.
- Aten, R.H. (1986) "Gross State Product: A Measure of Fiscal Capacity," in H.C. Reeves, ed., *Measuring Fiscal Capacity* (Boston: Oelgeschalger, Gunn, and Hain), pp. 97-140.
- Bahl, R.W. (1972) "A Representative Tax System Approach to Measuring Tax Effort in Developing Countries," *International Monetary Fund Staff Papers*, 19, pp. 87-122.
- Ballentine, J. G. and W. R. Thirsk (1982) *Taxation without Representation: The Consequences of Taxing Non-residential Property* (Ottawa: Canadian Mortgage and Housing Corporation).
- Bird, R.M. (1984) "Tax Harmonization and Federal Finance: A Perspective on Recent Canadian Discussion," *Canadian Public Policy*, 10, September 1984, pp. 253-66.
- Bird, R.M. (1986) *Federal Finance in Comparative Perspective* (Toronto: Canadian Tax Foundation, 1986).
- Bird, R.M. (1986a) "Corporate-Personal Tax Integration and Fiscal Harmonization in the EEC," in S. Cnossen, (ed.), *Tax Coordination in the EEC* (Deventer, Netherlands: Kluwer), pp. 227-51.
- Bird, R.M. (1987) "Federal-Provincial Fiscal Transfers in Canada: Retrospect and Prospect," *Canadian Tax Journal*, 35, Jan.-Feb. 1987, pp. 118-33.
- Bird, R.M. (1989) "Tax Harmonization in Federations and Common Markets," in M. Neumann, (ed.), *Public Finance and Performance of Enterprises* (Detroit: Wayne State University Press), pp. 139-51.
- Bird, R.M. and N.E. Slack (1989) "Formula Financing, Fiscal Capacity and Fiscal Effort in the Northwest Territories," A Report prepared for the Department of Finance, Government of the Northwest Territories.
- Boadway, R. (1989) "Federal Provincial Fiscal Relations in the Wake of Deficit Reduction," in R.L. Watts and D.M. Brown, (eds.), *Canada: The State of the Federation 1989* (Kingston: Institute of Intergovernmental Relations, Queen's University), pp. 107-35.
- Boadway, R.W. and F.R. Flatters (1982) *Equalization in a Federal State: An Economic Analysis* (Ottawa: Economic Council of Canada).
- Buchanan, J.M. (1950) "Federalism and Fiscal Equity," *American Economic Review*, 40, pp. 583-99.

- Courchene, Thomas J. (1984) *Equalization Payments: Past, Present and Future*, (Toronto: Ontario Economic Council).
- Courchene, T.J., D.W. Conklin, and G.C.A. Cook, eds. (1985) *Ottawa and the Provinces: The Distribution of Money and Power* 2 vols. (Toronto: Ontario Economic Council).
- Dean, J.M. (1988) "The Effect of Cost-of-Living Differentials on Tax Liabilities in Canada," *Canadian Tax Journal*, 36, pp. 1500-12.
- Dosser, D. (1967) "Economic Analysis of Fiscal Harmonization," in C.S. Shoup, (ed.), *Fiscal Harmonization in Common Markets* (New York: Columbia University Press), I, pp. 1-144.
- Duss, R. and R. Bird (1979) "Switzerland's 'Tax Jungle'," *Canadian Tax Journal*, 27, January-February 1979, pp. 46-67.
- Graham, J.F. (1964) "Fiscal Adjustment in a Federal Country," in *Inter-government Fiscal Relationships* (Toronto: Canadian Tax Foundation), pp. 3-31.
- Hall, E.M. (1980) *Canada's National-Provincial Health Program for the 1980's: 'A Commitment for Renewal'* (Ottawa: Department of National Health and Welfare).
- Johnson, A.W. (1985) *Giving Greater Point and Purpose to the Federal Financing of Post-Secondary Education and Research in Canada* (Ottawa: Secretary of State).
- Kapsalis, C. (1982) "Block Funding and Provincial Spending on Social Programs," *Canadian Tax Journal*, 30, pp. 219-27.
- Kwavnick, D. (1973) *The Tremblay Report*, Carleton Library no. 64 (Toronto: McClelland and Stewart).
- Morgan, W.D. (1974) "An Alternative Measure of Fiscal Capacity," *National Tax Journal*, 27, pp. 361-66.
- Musgrave, R., P. Musgrave, and R. Bird (1987) *Public Finance in Theory and Practice* (Toronto: McGraw-Hill Ryerson).
- Report of the Western Finance Ministers (1990) "Economic and Fiscal Developments and Federal-Provincial Fiscal Relations in Canada," Submitted to Western Premiers' Conference, Lloydminster, Saskatchewan, July.
- Robinson, A.J. and J. Cutt, eds. (1968) *Public Finance in Canada: Selected Readings* (Toronto: Methuen).
- Royal Commission on Dominion-Provincial Relations (1940) *Report* (Ottawa: King's Printer).
- Royal Commission on the Economic Union and Development Prospects for Canada (1985) *Report*, 3 vols. (Ottawa: Department of Supply and Services).
- Tait, A.A. and B.J. Eichengreen (1978) "Two Alternative Approaches to the International Comparison of Taxation," Departmental Memorandum DM/78/33, Fiscal Affairs Department, International Monetary Fund.
- Thomassen, H. (1990) "Discussion: Measuring Fiscal Capacity," in F. D. Stocker, (ed.), *1989 Proceedings of the Eighty-Second Annual Conference on Taxation* (Columbus, Ohio: National Tax Association-Tax Institute of America), pp. 25-27.



# IV

## Focus on the Provinces

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## L'immigration au Québec en 1990: à l'heure des choix

*Daniel Bonin*

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*For some years now Quebec has been facing the most serious demographic crisis in its history. As a result of the anemic birth rate of Quebecers — a trend which does not seem to be declining — the population of Quebec by the turn of the century will find itself in a downward spiral of reduction and aging. In order to avoid this grim scenario, the government of Quebec has come to see immigration as the means of ensuring the demographic security of Quebec.*

*This article reviews the process by which Quebec has reaffirmed its interest in immigration policy after nearly a century. In Quebec the political climate since the "Quiet Revolution" has seen a revived interest in its long-neglected jurisdiction over immigration, as well as the acquisition of new powers in a spirit of relative cooperation with Ottawa.*

*Second, the article reviews Quebec's current priorities in this policy area. Until the failure of the Meech Lake Accord clouded the constitutional issue, Quebec has held to the twin objectives of determining immigration levels and ensuring that immigration is, at least in part, favourable to the demographic situation in Quebec. Especially where the selection of immigrants is concerned, Quebec must ensure that the door is not shut on its distinct character as a francophone majority society. A delicate balance will have to be struck between immigration which is strictly francophone and "allophone" immigration which should be quickly integrated to the french community.*

*Moreover, this chapter examines the Government of Quebec's policy towards ethnic groups over the past decade. Finally, the author takes the view that Quebec must, sooner or later, undertake a truly regional policy of immigration in order to deal with the concentrated growth of immigrants in the metropolitan Montreal region.*

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### INTRODUCTION

Alors que le "désaccord de Meech" a généré depuis quelques mois déjà un intense et peut-être décisif débat sur l'avenir politique et constitutionnel du Québec, un autre enjeu, tout aussi crucial que le précédent, à savoir le devenir

démographique de la société québécoise, est encore loin des feux de la rampe médiatique. Or, au milieu des années quatre-vingt, deux études gouvernementales<sup>1</sup> sonnaient l'alarme coup sur coup en révélant que le Québec traverse actuellement la plus grave crise démographique de son histoire, caractérisée pour l'essentiel par une fécondité en chute libre<sup>2</sup> et, depuis 1971, un solde migratoire interprovincial négatif.<sup>3</sup> Par conséquent, le Québec devrait atteindre le point de croissance zéro au tournant du siècle avec, pour toute perspective, une décroissance progressive et quasi-inéluctable de sa population. Auquel cas, cette dynamique du déclin aurait inexorablement pour effet d'accélérer le vieillissement de la population québécoise, laquelle pourrait bien totaliser, d'après le plus pessimiste des scénarios, moins de 5 millions d'habitants vers l'an 2050.<sup>4</sup>

Il aura fallu attendre plusieurs années, divers rapports de commissions et autant d'audiences publiques pour que le gouvernement du Québec décide de s'attaquer pour de bon à la problématique démographique de la province. En se dotant récemment d'une politique de population qui adopte une approche globalisante de la question, les autorités québécoises manifestaient clairement leur intention "d'assurer l'avenir démographique du Québec" en articulant une stratégie à deux volets: a) d'abord par le recours à des mesures de soutien aux familles de manière à encourager la natalité et le retour à des familles plus nombreuses; partant, on se trouverait à relever l'indice synthétique de fécondité à 1.8 (ISF jugé plus réaliste à atteindre que le toujours très souhaitable 2.1);<sup>5</sup> b) puis en reconnaissant — un peu paradoxalement — le caractère "complémentaire"<sup>6</sup> mais en même temps "vital et essentiel"<sup>7</sup> de l'immigration, au regard de la sécurité démographique du Québec, comme en fait foi d'ailleurs le relèvement substantiel de près de 40% du budget d'opération du ministère des Communautés culturelles et de l'Immigration pour l'année 1989-90. Le présent chapitre se propose d'aborder de façon spécifique ce second volet de la politique démographique adoptée par le gouvernement du Québec et d'analyser les divers enjeux qui s'y rattachent.

Du fait qu'elle procure un apport immédiat et direct de population, on perçoit l'immigration à Québec non pas comme une panacée mais bien comme un "moyen important pour transformer la perspective de dépopulation en perspective de stabilisation démographique".<sup>8</sup> En fixant à 35,000 le niveau d'immigration pour 1990, le gouvernement du Québec visait d'abord à compenser en partie la fécondité anémique des Québécois mais aussi à permettre à la province, à moyen terme, d'accueillir une part de l'immigration internationale correspondant davantage à son poids démographique au sein de la fédération canadienne. Autre objectif enfin et non le moindre: s'assurer que l'immigration reçue au Québec ne porte pas ombrage au caractère distinct du Québec. Collectivité pour une large part francophone imbriquée dans un continent massivement anglophone, le Québec attend de ses immigrants qu'ils

s'intègrent le plus tôt possible à la majorité francophone, et ce, en dépit de la puissante attraction culturelle et économique exercée par le géant anglo-saxon.

Dans ce contexte, la francisation des immigrants constitue un défi permanent. A preuve, depuis une dizaine d'années, la proportion des nouveaux arrivants au Québec qui possèdent une connaissance du français a baissé de façon continue, passant de 43,5% en 1983 à 29,6% en 1989. En revanche, selon une étude récente effectuée par le ministère des Communautés culturelles et de l'Immigration du Québec (MCCI) à partir du recensement de 1986, 69% de la population immigrée vivant au Québec avaient déclaré pouvoir communiquer en français, un pourcentage encore jamais atteint jusqu'à présent.<sup>9</sup> Sans conteste, l'influence déterminante exercée par la Loi 101 sur les enfants d'immigrés scolarisés en français depuis 1977 a eu pour effet d'accroître le nombre des locuteurs français au sein de la population immigrée.

Néanmoins, plusieurs Québécois natifs (ou dits "de souche") craignent que la région métropolitaine de Montréal ne soit déjà devenue la porte d'entrée pour le cheval de Troie de l'anglicisation au Québec. Ce spectre d'une anglicisation galopante des néo-Québécois n'est certes pas étranger à ce que certains appellent la "montréalisation" de l'immigration au Québec.<sup>10</sup> Ainsi, l'île de Montréal a attiré en 1986 environ les quatre cinquièmes des immigrants ou réfugiés entrés au Québec cette année-là alors qu'au début de la dernière décennie, cette proportion était des deux-tiers.<sup>11</sup>

Devant cette concentration accrue de la population immigrée du Québec à Montréal, d'aucuns soulignent l'importante mobilité linguistique qu'opèrent, depuis des lustres, une majorité d'allophones en faveur de l'anglais pour justifier leur appréhension linguistique. S'agissant des personnes de langue maternelle tierce qui ont effectué un transfert linguistique jusqu'ici (soit 23% d'entre eux), le recensement de 1986 révèle en effet que ces transferts se sont produits globalement dans une proportion de 66% vers l'anglais et de 34% vers le français.<sup>12</sup> Par contre on assisterait, d'après l'étude du MCCI, à un renversement progressif de cette tendance en faveur du français chez les cohortes d'immigrés arrivés après 1976.<sup>13</sup> Cependant,

les transferts effectués dans le passé en faveur de l'anglais continueront (...) de peser lourd sur ce phénomène tant et aussi longtemps que les cohortes anciennes représenteront une part importante de la population immigrée. Or, rappelons que 61% des personnes de tierce langue maternelle présentes au Québec en 1986 étaient arrivées avant 1971.<sup>14</sup>

C'est vraisemblablement à cause de cette tendance lourde en matière de transfert linguistique que nombre de Québécois francophones considèrent que les immigrants parlent davantage anglais que français. Mais, en fait, 62% d'entre eux ont, jusqu'à ce jour, conservé leur langue d'origine.

Toutefois, la force d'inertie de l'anglais à Montréal, sur les plans socio-culturel et économique, contribue de toute évidence aux vicissitudes de



l'entreprise d'intégration des groupes ethno-culturels à la culture française du Québec. À l'ère de la Loi 101, l'épisode récent montrant, dans nombre d'écoles pluriethniques francophones de Montréal, une allégeance plus grande à l'anglais de la part de la jeune génération allophone tendrait, entre autres exemples, à confirmer le phénomène.<sup>15</sup>

Ces prolégomènes étant dits, on s'emploiera dans les pages suivantes à décrire le processus qui a conduit le Québec à réaffirmer son intérêt vis-à-vis du dossier de l'immigration après une éclipse quasi centenaire. L'on verra ensuite que la dynamique politique engendrée par la Révolution tranquille favorisa tantôt la récupération de compétences longtemps délaissées, tantôt l'obtention de nouveaux pouvoirs par le Québec dans le domaine de l'immigration et ce, dans un esprit de relative collaboration avec Ottawa.

Nous ferons aussi le point sur l'approche actuelle du Québec en cette matière. L'accent sera mis sur l'importance accordée par le gouvernement aux questions touchant notamment les niveaux d'immigration et le type d'immigration que le Québec entend privilégier dans l'avenir. Nous examinerons en dernier ressort la politique d'intervention auprès des communautés culturelles adoptée, depuis une décennie, par le gouvernement du Québec ainsi que les divers aspects que pourrait emprunter une éventuelle politique de régionalisation de l'immigration au Québec, afin de contrebalancer le poids de l'enclave montréalaise.

## UNE ABSENCE SECULAIRE

Pendant presque un siècle, soit de 1875 jusqu'au milieu des années soixante, les politiques d'immigration au Québec auront été, pour ainsi dire, l'affaire du gouvernement fédéral. Pourtant, quelques années déjà avant le début de sa longue éclipse, le gouvernement du Québec avait exercé les prérogatives que lui confère l'article 95 de la *Loi constitutionnelle de 1867* en cette matière<sup>16</sup> en se dotant, au début des années 1870, d'un réseau autonome d'agents d'immigration relevant des provinces et en publiant des brochures destinées aux futurs immigrants. Mais l'époque est alors à l'exode d'un grand nombre de Québécois vers les États-Unis; devant les pressions de l'opinion publique en faveur de leur rapatriement et en raison des frais relatifs encourus par les services d'immigration à l'étranger, le Québec signa en 1875 une entente avec l'Ontario et le Nouveau-Brunswick en vertu de laquelle les agences indépendantes des provinces se trouvaient abolies. Dès lors, le Québec allait donc devoir se soumettre, non sans quelque réticence toutefois, à l'autorité fédérale dans ce champ de juridiction. C'est finalement en 1883 que le Québec renonça totalement à ses pouvoirs dans ce domaine d'intervention au profit du gouvernement central, et ce, jusqu'à ce que le néo-nationalisme issu de la Révolution tranquille n'en ravive l'intérêt.<sup>17</sup>

Le désengagement du Québec — mais également des autres gouvernements provinciaux — dans le dossier de l'immigration aura donc eu pour conséquence de laisser la voie libre à Ottawa quant à la détermination du nombre et de la provenance des ressortissants étrangers admissibles au pays. De fait, hormis l'Ontario qui "géra" ponctuellement la venue d'immigrants en 1947, les politiques canadiennes en matière d'immigration auront été mises en oeuvre, pour l'essentiel, jusqu'à la fin des années quarante, par le gouvernement fédéral de concert toutefois avec les compagnies ferroviaires soucieuses d'avoir accès à de nouveaux territoires et les compagnies minières avides de main-d'oeuvre.

Au début du XXe siècle, soit entre 1902 et la Première Guerre mondiale, on assista au "grand boom" de l'immigration au Canada à la faveur du Plan Sifton, du nom du ministre de l'Intérieur sous le gouvernement Laurier. Durant cette période, près de trois millions d'immigrants firent leur entrée au pays; environ la moitié d'entre eux s'établirent dans l'Ouest afin de satisfaire l'un des volets de la "National Policy" — l'immigration — vouée au peuplement de cette région inexploitée, l'autre moitié se dirigeant vers les centres urbains du Québec et de l'Ontario.

L'immigration pratiquée à l'époque par le gouvernement fédéral s'est avérée en quelque sorte "préférentielle et restrictive"<sup>18</sup> dans la mesure où elle favorisa, dans une proportion de soixante-quinze pour cent, les ressortissants étrangers d'origine britannique (citoyens blancs de l'Empire — 41% — puis Américains — 32% —). La part des immigrants français provenant des autres contingents était, somme toute, assez modeste.<sup>19</sup> Au Québec, l'intelligentsia nationaliste canadienne-française qui comprenait des figures tels que Henri Bourassa, Armand Lavergne et Jules Fournier s'indigna de la sélection des immigrants privilégiée par le gouvernement fédéral; on déplorait précisément l'incurie d'Ottawa à recruter davantage d'immigrants francophones — belges ou français —. Les ressortissants étrangers en provenance d'Europe de l'Est étaient visés en particulier dans la mesure où ceux-ci — et singulièrement les Juifs ashkénazes — formaient alors au Québec la communauté culturelle la plus nombreuse. A une époque où l'Eglise québécoise se chargeait de rappeler le lien indéfectible existant d'après elle entre langue et religion, il allait alors de soi, au Canada français, d'assimiler les immigrants non-catholiques aux protestants et partant, de les présenter comme des alliés naturels de la communauté anglaise. Pour les élites québécoises, le biais pro-britannique d'Ottawa dans le choix de ses immigrants remettait en cause le substrat ethnique de la population canadienne fondé sur le développement simultané et équilibré des deux cultures de base. D'aucuns y décelaient même une volonté manifeste des politiciens fédéraux anglophones de concrétiser, a posteriori, la politique assimilatrice déjà prescrite au siècle dernier par Lord Durham, à l'encontre des Canadiens-français.

Au demeurant, le réflexe défensif présent au Québec face à l'immigration non-francophone témoignait d'une profonde insécurité sur plan culturel, qui ne s'est d'ailleurs jamais démentie jusqu'à nos jours. Ainsi, on était convaincu en effet que la société québécoise ne parviendrait, en aucun temps, à réaliser l'intégration de ses immigrants sur son territoire. Du reste, "les nationalistes considéraient que les immigrants allophones ne pourraient jamais s'identifier à la conscience historique des Canadiens-français".<sup>20</sup> Malgré tout, la réalité ethnoculturelle ne faisait pas de doute à Montréal, en 1921, puisque la part des allophones s'élevait déjà à 12%.<sup>21</sup>

Après une interruption pendant la Crise et au cours de la Deuxième Guerre mondiale, l'immigration fut à nouveau relancée par le gouvernement fédéral pour pallier à la "pénurie aigue" de main-d'oeuvre au pays dans certaines industries de base telles que l'agriculture, les mines et l'exploitation forestière. Dès l'après-guerre en effet, le gouvernement central dirigé par Mackenzie King instaura un cadre général aux fins de la politique d'immigration canadienne, lequel établissait désormais un lien étroit entre capacité d'accueil et besoins en main-d'oeuvre. Les mesures proposées subséquentement par Ottawa participaient, mutatis mutandis, de la même philosophie;<sup>22</sup> pour l'essentiel, il allait être question dès lors d'assurer une coordination accrue entre les besoins en main-d'oeuvre et la venue des immigrants. La création du ministère fédéral de la Main-d'oeuvre et de l'immigration en 1966 consacra de fait cette volonté d'améliorer l'"employabilité" canadienne. Pour maximiser l'efficacité de cette politique, Ottawa en vint à abolir progressivement, dans les années soixante, tout critère discriminatoire à caractère racial ou ethnique dans la sélection des immigrants. On souhaitait par là étendre l'aire de recrutement de l'immigration internationale au-delà du continent européen (en particulier en Asie et dans les Caraïbes) de manière à satisfaire les besoins croissants en main-d'oeuvre qualifiée auxquels était confronté le Canada.

Par ailleurs, durant cette même période, soit de l'après-guerre à la fin des années soixante, force est de constater que

le Québec n'a pas déterminé lui-même sa politique d'immigration mais a été tributaire de la politique canadienne d'immigration, façonnée selon des objectifs nationaux liés à la capacité d'absorption de l'ensemble du territoire canadien. Cette capacité d'absorption a toujours été évaluée en relation avec les fluctuations cycliques de l'activité économique canadienne, sans égard particulier aux comportements économiques régionaux souvent fort différents.<sup>23</sup>

A cet égard le Québec aura été désavantagé, par rapport à l'Ontario notamment, sur le plan de sa structure industrielle de base. De fait, l'économie du Québec est en grande partie orientée vers la production de biens de consommation courante, lesquels sont relativement moins sensibles à des changements conjoncturels que les biens d'équipement. Si, en période de récession, le ralentisse-

ment économique fut grosso modo moins marqué au Québec qu'ailleurs au Canada, la reprise s'est avérée par contre nettement plus lente.

Concrètement, cela impliquait qu'au moment où l'ensemble de l'activité économique canadienne, influencée fortement par la situation de l'Ontario, avait besoin de mesures restrictives pour pallier une situation de surchauffe, le Québec, pour sa part, n'avait pas atteint son potentiel de plein emploi (...). C'est ainsi que, (...) au cours de cette période, l'immigration internationale n'a pas vraiment été au Québec un facteur de croissance économique (...) aussi l'incidence économique de l'immigration a été moins positive pour le Québec que pour certaines autres régions canadiennes.<sup>24</sup>

Situation qui, sur le plan historique, ne favorisa guère le Québec quant à la rétention de ses immigrants. On ne saurait ignorer la responsabilité du gouvernement central à ce chapitre dans la mesure où Ottawa n'est pas parvenu à concilier le type et les niveaux d'immigration fédéraux — établis selon une logique pan-canadienne — avec le profil économique-culturel spécifique du Québec.<sup>25</sup>

Malgré que le Québec ait fait objectivement les frais à cette époque du contrôle exclusif des politiques d'immigration exercé par les autorités fédérales, le gouvernement du Québec restait indifférent face au processus décisionnel en cette matière. Partisan de l'État-minimum dans le domaine socio-économique où le laisser-faire devait primer sur toute forme d'interventionnisme étatique, le gouvernement québécois, sous la houlette duplessiste, fit de même au regard de l'immigration. De fait, ce gouvernement fut incapable

d'intervenir dans des domaines pourtant de compétence provinciale exclusive comme l'éducation et les affaires sociales. On voit mal alors quelle constellation de forces politiques et économiques auraient pu le pousser à se donner une politique d'immigration.<sup>26</sup>

Au reste, l'absence du Québec dans ce secteur d'intervention n'était pas uniquement son fait; à preuve, le peu d'intérêt manifesté par l'ensemble des provinces canadiennes, dans les années cinquante, à l'endroit des rencontres à caractère consultatif sur l'immigration, entre le gouvernement fédéral et les provinces.<sup>27</sup>

Jusqu'à la Révolution tranquille, l'emprise du nationalisme traditionaliste — incarné par le gouvernement Duplessis — sur de larges couches de la société québécoise empêcha celle-ci d'aborder positivement la question de l'immigration. En dépit de la nouvelle vague d'immigration au Canada de 1946 à 1960, qui confirma le virage cosmopolite d'une ville comme Montréal, le pouvoir duplessiste persistait à relativiser voire nier l'importance du phénomène en préférant miser sur la "revanche des berceaux", afin d'assurer

la "survivance canadienne-française" et contrer du coup l'apport immigrant au Québec. Ainsi,

l'Etat québécois ne se sentait guère concerné par l'intégration des (...) immigrants et il ne disposait d'aucune structure d'accueil à cet effet. Ce champ de compétence était abandonné au gouvernement fédéral et les services étaient laissés à l'initiative de l'Eglise, de la Chambre de commerce et des groupes ethniques.<sup>28</sup>

Les appréhensions séculaires des francophones face à une anglicisation du Québec encouragée par Ottawa, par le moyen de l'immigration,<sup>29</sup> ne prédisposèrent guère à un rapprochement entre Québécois de souche et néo-Québécois; au surplus, le repliement culturel des francophones, combiné à leur position d'infériorité sur le plan économique ainsi qu'au statut prépondérant de la langue anglaise au Québec, auront incité une majorité d'allophones à s'intégrer à la communauté anglophone, mieux préparée alors à les accueillir.

### UN MODUS VIVENDI QUEBEC-OTTAWA

Si le vaste programme de "rattrapage sociétal" entrepris dans les années soixante par le nouveau pouvoir libéral amena l'Etat québécois à se doter d'instruments d'intervention dans des secteurs aussi importants que l'éducation, la culture, la santé et l'économie, en revanche une question comme l'immigration mit encore longtemps avant de constituer une réelle priorité pour le gouvernement du Québec. En fait, les autorités québécoises attendirent jusqu'au milieu des années soixante-dix pour dépasser le stade de l'intervention symbolique dans ce domaine et véritablement envisager l'immigration dans une perspective à la fois socio-économique et démolinguistique. Et il aura fallu encore dix ans pour que la question de l'immigration se hisse au rang des cinq préoccupations essentielles du Québec dans l'optique d'une éventuelle révision constitutionnelle. Au reste, comme on le verra dans cette partie, les initiatives adoptées par Québec ne se sont pas inscrites dans une stratégie de confrontation avec Ottawa mais ont plutôt épousé les paramètres généraux fixés par le gouvernement fédéral.

Quand d'ordinaire on s'emploie à résumer l'histoire récente de l'intervention québécoise en matière d'immigration, quelques années-phares émergent de manière presque incontournable, soit 1968: création du ministère de l'Immigration du Québec (MIQ); 1981: transformation du MIQ en le ministère des Communautés culturelles et de l'Immigration (MCCI); 1971, 1975, 1978: signature d'accords bilatéraux entre Québec et Ottawa relativement à ce dossier spécifique.

Dès 1965 pourtant, le gouvernement libéral de Jean Lesage mit sur pied un Service de l'Immigration qui allait relever du ministère des Affaires culturelles. L'initiative avait principalement pour but de réagir au constat alarmiste présenté en Chambre par l'Opposition, laquelle qualifiait de "tragédie nationale" le fait

qu'une très faible proportion d'immigrants s'intégrât à la majorité francophone.<sup>30</sup> Deux ans plus tard, sous le gouvernement unioniste de Daniel Johnson, le dossier de l'immigration fut transféré au Secrétariat de la province, sorte d'étape préalable à la consécration ministérielle. L'année suivante, soit en septembre 1968, éclatait une crise linguistique à Saint-Léonard, en banlieue de Montréal, opposant d'une part des néo-Québécois partisans du libre choix à l'école — ... anglaise, en fait, dans leur cas — et de l'autre, des tenants de l'école unilingue française. Cet événement fut l'élément déclencheur qui conduisit, en novembre de la même année, à la création du MIQ. Le nouveau ministère allait, dès lors, orienter son action autour des deux priorités suivantes:

- collaboration avec le gouvernement fédéral qui détient l'expertise ainsi que la prépondérance législative en cette matière (on blâmait cependant Ottawa de ne pas informer adéquatement les futurs immigrants au sujet de la dualité culturelle du pays et de négliger la sélection d'immigrants francophones susceptibles de s'installer au Québec).
- élaboration d'une politique à double volet axée d'une part sur la sensibilisation de la société d'accueil francophone à la réalité immigrante et, d'autre part, sur l'adaptation et l'intégration des immigrants à la communauté franco-québécoise. D'ailleurs, la création des Centres d'orientation et de formation des immigrants (COFI) visa, de façon spécifique, à atteindre cet objectif.

Ottawa ne trouva rien à redire de l'approche québécoise en matière d'immigration dans la mesure où elle tenait compte de la primauté constitutionnelle du gouvernement fédéral et, qu'ensuite, elle attribuait au gouvernement du Québec un rôle d'appoint plutôt que concurrentiel face à son homologue canadien.<sup>31</sup>

Sans conteste, au cours de ses premières années d'existence, le MIQ aura consacré la très large part de ses activités à la question de l'intégration des immigrants. En fait, comme le souligne Daniel Latouche,

l'intérêt du ministère pour les questions de sélection est [alors] si peu développé qu'à plusieurs reprises entre 1970 et 1973, le ministère de l'Immigration se sent justifié de proposer un gel sinon une réduction du nombre d'immigrants. On préfère se concentrer sur l'organisation des cours de langue et sur l'épineuse question de l'accès au marché du travail.<sup>32</sup>

Le MIQ vit à l'époque (particulièrement autour de 1970-1971) une période d'ajustement, voire de "dormance",<sup>33</sup> durant laquelle on tente de trouver une raison d'être au ministère. Progressivement va s'opérer un questionnement en vertu duquel l'immigration cessera d'être envisagée sous l'angle strict de l'intégration culturelle et linguistique. Cette réflexion débouchera en 1975 sur un important changement de perspective: dès lors, l'immigration devient une