

# **Does Canada Matter?**

**Gordon Robertson**

**The 1990 Kenneth R. MacGregor Lecturer**

**Reflections Paper No. 7**

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## FOREWORD

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This publication is the revised text of a public address by Gordon Robertson as the sixth Kenneth R. MacGregor Lecturer in Intergovernmental Relations. The lecture was delivered at Queen's University on November 27, 1990.

The MacGregor Lectureship was established in order to bring to Queen's University each year a distinguished individual who has made an important contribution to the understanding or practice of federalism, intergovernmental relations and related issues in Canada or other countries. The lectureship honours Kenneth R. MacGregor, a Queen's graduate, longtime member of the Queen's Board of Trustees, former Superintendent of Insurance of Canada, and retired Chairman of the Mutual Life Assurance Company of Canada. It is funded through the generosity of the company, members of the Queen's Board of Trustees, and friends. The previous lecturers have been former Progressive-Conservative leader Robert Stanfield, former Premier of Alberta, Peter Lougheed, Professor Alan Cairns of the University of British Columbia, former Saskatchewan Premier Allan Blakeney and University of Toronto Professor, Albert Breton.

Few Canadians are as qualified to lecture on federalism and intergovernmental relations as Gordon Robertson. He brings the perspective of long practical experience in the operation of our federal system in Canada, and an intimate knowledge of the many previous attempts to reform the Canadian constitution. He held a number of senior posts in the Government of Canada, including Deputy Minister of Northern Affairs and Commissioner of the Northwest Territories, 1953-63; Clerk of the Privy Council, 1963-75; and Secretary to the Cabinet for Federal-Provincial Relations, 1975-79. He was President of the Institute of Research on Public Policy from 1980 to 1984, was chancellor of Carleton University, 1980-90, and is a member of the Queen's Privy Council for Canada. He is the author of *A House Divided: Meech Lake, Senate Reform and the Canadian Union*, published in 1989, and is an active advisor to many organizations on issues related to constitutional reform.

The publication of this lecture could not be more timely. Gordon Robertson presents a clear and succinct argument which goes to the heart of the current constitutional issue gripping Canada. His compelling analysis leads him to the view that Canada is in a crisis as great as any this country has ever faced, a reality of which many Canadians are only becoming aware. This lecture, somewhat revised since its delivery two months ago to take account of the

rapidly evolving debate, explores the depth of misunderstanding and competing visions that lay at the root of the debate and demise of the Meech Lake Accord. The rejection of the Accord has led to a resurgence of support for sovereignty in Quebec, and, Robertson fears, a crippling inflexibility in the rest of the country. The lecture reviews the prospects for the three main options that Robertson thinks are realistic: a greatly decentralized federation, a federation where Quebec has significantly more power than other provinces, and sovereignty for Quebec. His analysis concludes that the best option would be an "asymmetrical" federation, where Quebec would have greater powers to protect its language and culture, but where government in the rest of Canada would not be excessively decentralized. He further recommends that Canadians both in Quebec and elsewhere be given a role in choosing among constitutional options through advisory plebiscites.

Written in clear terms understandable to a broad audience, this lecture makes an important contribution to the current Canadian debate. The Institute is very pleased to publish it.

*Ronald L. Watts*  
*Director*  
*Institute of Intergovernmental Relations*  
*February 1991*

## SOMMAIRE

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La conférence jette d'abord un éclairage sur les différentes approches de la situation constitutionnelle au Canada, c'est-à-dire nommément les perspectives québécoise et de l'Ouest avec, en toile de fond, l'exacerbation de la problématique autochtone et la fronde linguistique au Canada anglais. Sont ensuite abordées les options constitutionnelles qui s'offrent au Canada.

Après avoir écarté le statu quo comme option possible, le conférencier est d'avis que parmi les options les plus vraisemblables, l'une consisterait à modifier le statut constitutionnel du Québec de manière à lui accorder le pouvoir de protéger sa langue et sa culture françaises. Auquel cas, les autres provinces ne disposeraient pas d'un tel droit équivalent. Cette situation consacre en fait une fédération de type asymétrique. Une seconde option envisageable reviendrait à avaliser, à la faveur du Québec, une série de modifications sur le plan constitutionnel qui déboucheraient, en fin de compte, sur un fédéralisme fortement décentralisé. La troisième option possible résiderait en la "souveraineté" du Québec, mais assortie d'une "association" négociée avec le reste du Canada, association avant tout — mais pas exclusivement — de nature économique. Le conférencier se montre par ailleurs sceptique devant l'idée qu'on parvienne à élaborer une toute nouvelle constitution afin de régler la présente crise constitutionnelle.

Après avoir examiné ces options, Gordon Robertson estime qu'un fédéralisme asymétrique s'avère de loin la meilleure solution si tant est que le Québec et le reste du Canada puissent s'entendre à cet égard. Toutefois, la concrétisation d'une telle forme de fédéralisme soulève une difficulté de taille dans la mesure où est remise en cause ici la thèse voulant que les provinces soient égales et doivent être traitées de manière identique. Un autre problème a trait aussi à la différence d'attitudes, entre le Québec et le reste du Canada, au sujet des droits à définir dans la Charte canadienne des droits et libertés. Par ailleurs, les pouvoirs du gouvernement fédéral se trouveraient grandement amoindris dans l'hypothèse où on ferait face à un modèle de fédéralisme décentralisé allant bien au-delà du défunt Accord du lac Meech. La troisième option, soit la souveraineté-association, comporterait de sérieuses difficultés tant sur le plan de la négociation avec le reste du Canada qu'au niveau des structures intrinsèques de cette association.

Somme toute, le conférencier n'entrevoit que deux options vraiment réalistes pour le Canada, à savoir le fédéralisme asymétrique ou bien une séparation

complète du Québec sans association sinon celle qui pourrait être négociée subséquemment entre le Québec et le reste du Canada, les deux entités formant alors des Etats indépendants. Gordon Robertson suggère, dans le but de clarifier les options en présence et également, de connaître l'opinion de la population sur le plan constitutionnel, que soient tenus des plébiscites consultatifs, l'un au Québec et l'autre, dans le reste du Canada.

Par la suite, des négociations entre les deux parties pourraient avoir lieu et, forts de l'opinion exprimée par leur population respective, les protagonistes devraient être mieux éclairés, question leadership, que ne le furent les acteurs impliqués dans l'épisode Meech. Au demeurant, la voie et la méthode retenues devraient dépendre des choix effectués par les populations québécoise et canadienne à l'occasion de ces plébiscites.

## ABSTRACT

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The lecture begins with an analysis of the widely differing views of Canada's constitutional situation as seen in Quebec and in Western Canada, and of the added complications of the problems of aboriginal rights and of the reaction to the "language problem" in English-speaking Canada. It then considers what may be the constitutional options open to Canada.

After dismissing the status quo as an option, the lecturer suggests that the first of probable options is substantial change in the constitutional position of Quebec to give it power to protect its French language and culture, with no similar change for other provinces, which would produce an asymmetrical federation. A second option would be a generalization of the changes for Quebec, which would result in a greatly decentralized federalism. The third would be "sovereignty" for Quebec with a negotiated "association" with the rest of Canada, primarily but not exclusively economic. The lecturer expresses skepticism about the feasibility of working out a completely new constitution as a solution to the present crisis.

In his analysis of the options, the lecturer finds an asymmetrical federalism to be much the best solution, if an agreement can be achieved by both Quebec and the rest of Canada. A major problem in its achievement is the concept that provinces are equal and must be treated in the same way. Another lies in the differing attitudes between Quebec and the rest of Canada concerning rights as defined by the Charter of Rights and Freedoms. A model of decentralized federalism that went much further than the Meech Lake Accord would seriously weaken the federal government. The third option, sovereignty association, would present very serious problems in negotiation and in the structures for association.

The lecturer concludes that the genuinely realistic options appear to be an asymmetrical federalism or, alternatively, complete separation of Quebec, with no association other than what can subsequently be negotiated by two independent states. He proposes advisory plebiscites, one in Quebec and the second in the rest of Canada, to present the options clearly and to have a public expression of views. On the basis of those views negotiations could take place with a clearer sense of direction than was available in the case of Meech Lake. The course and method would depend on the solution chosen in the plebiscites.



## PREFATORY NOTE THE CRISIS DEEPENS

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The two months since this lecture was delivered have seen a rapid sharpening of the constitutional crisis in Quebec. The events there have not altered the basic considerations I addressed on November 27, 1990 but they have narrowed the options for Canada.

The submissions to the Bélanger-Campeau Commission during December and January remained overwhelmingly sovereigntist. Federalism had few defenders. The latest polls in Quebec show over 70 percent in favour of sovereignty. The report of the Commission at the end of March is bound to reflect these facts. The members of the Parti Québécois at their January convention were understandably euphoric.

The constitutional committee of the Liberal Party of Quebec — the Allaire Committee — published its report *A Quebec Free to Choose*, on January 29. Even after intervention by Premier Bourassa, newly returned from a two month absence for treatment for cancer, the report on policy for the *federalist* party in Quebec is a document that can only shock “the rest of Canada.” It calls for a total rewriting of our constitution with a massive increase in the powers of Quebec, a great reduction in the powers of Parliament and a major change in our judicial and parliamentary institutions. If the report is accepted by the provincial Liberal Party and Mr. Bourassa’s government, and the only risk may be pressure by the sovereigntists of the party for a more extreme position, 18 months are proposed for decision by Canada on the proposals. If the decision is negative, a referendum before the end of 1992 would put the question of complete independence to the people of Quebec.

In the circumstances, some of the options I discussed on November 27th no longer seem probable. A generalization to all provinces of powers of the scale proposed for Quebec in the Allaire Report would produce a federalism so weakened that it would almost certainly not be acceptable to the rest of Canada. Nor, I think, would a special status for Quebec based on anything like the powers the report proposes be acceptable. We are coming down, I believe, to two realistic possibilities: acceptance of a special regime for Quebec genuinely related to what is necessary for the protection of its French language and culture; or, alternatively, full independence. That independence could be followed by whatever negotiation of economic and other arrangements may

seem, in the probably bitter climate of that time, to be of mutual advantage. They are unlikely to be extensive.

Other issues remain seeking attention, but the circumstances in the next 18 months will not be the best for the consideration they deserve.

*Gordon Robertson  
Ottawa  
January 1991*

## DOES CANADA MATTER?

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### INTRODUCTION

For anyone who has followed developments in Quebec in the five months since the demise of the Meech Lake Accord on 23 June 1990, it would require great optimism to have any confidence that Canada, as an undivided country, will exist five years from now. It was, I believe, Sam Goldwyn who warned about the dangers of prophesying — “especially about the future.” With due regard for that wisdom, I shall only say that, in my judgement, the prospects for a Canada “from sea to sea,” for more than a very few years ahead, are less than 50 percent.

In many respects, the most frightening aspect of the crisis — and what makes it so much more dangerous — is the complacency, or the blissful unawareness, of most Canadians outside Quebec about it.

Poll after poll shows the proportion of the population of Quebec in favour of “sovereignty,” rather than a reformed federal system, rising from the 20 percent range in the mid-1980s to 60 percent after Meech Lake died, and a poll of early December, to 64 percent. The proportion in favour of the separation of Quebec from Canada, even if there were to be no economic or other association of any kind, was 58 percent in that poll. These figures represent a major change in attitude; a sharp decline in attachment to Canada and a great increase in readiness to “go it alone.” Many federalists in Quebec gave up in despair when the Meech Lake Accord died. The belief in federalism has shrunk so dramatically that few submissions to the Bélanger-Campeau Commission<sup>1</sup> in Quebec support it. Many submissions, including those of highly responsible business organizations, such as the Caisses Desjardins, call for a direct and early declaration of sovereignty by Quebec as the only means to bring about negotiations on whatever economic association might be possible after separation.

The danger in the crisis does not lie only in the change in attitudes in Quebec or in the complacency in English speaking Canada. It lies also in strongly held views, especially in the west, that clash directly with the values and aspirations that are fundamental to French speaking Quebec. There was in June, and there

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1 The formal title of this commission is the Commission on the Political and Constitutional Future of Quebec. The co-chairmen are Michel Bélanger and Jean Campeau.

is now, little understanding in English speaking Canada why the rejection of the Meech Lake Accord was so important to Quebec. Without such understanding there is little prospect of any solution short of separation.

### MEECH LAKE AS SEEN IN QUEBEC

Since the Quebec Referendum of 1980 ten years ago, the political and opinion leaders of Quebec have waited, without response, for a positive answer to the "Yes" which Quebec then gave to a promised "renewal" of federalism. That there was a promise is beyond doubt — it was by the Prime Minister of Canada and by leaders from English speaking Canada who went to Quebec to appeal to the people there to cast their votes for federalism. A "No" vote on a mandate for the Government of Quebec to negotiate "sovereignty association" would *not*, they said, be a vote for the status quo — it would be a vote for a "renewed federalism." It is absurd to argue that, in the context of the time, the promise was not meant to be understood as an undertaking for renewal of a kind that was relevant to the debate in the campaign — relevant to the status of Quebec and to its capacity to protect the French language and culture. The reaction in 1981 and in the years since makes it clear that the promise was heard that way in Quebec. There is little doubt that it was a major factor in securing the vote for federalism.

Some 60 percent of the voters of Quebec declared in that way for "renewed federalism." The negotiations of 1980 and 1981, with two conferences of first ministers, ended with something quite different — the "agreement without Quebec." It caused Mr. Lévesque, the Premier of Quebec, to leave the conference in anger, and led to an all-party condemnation in the Quebec legislature. Every government at the 1981 conference except Quebec got some important gain: for the west, the amending procedure it wanted and a new provision on jurisdiction over non-renewable resources; for the Atlantic provinces, a constitutional commitment to the promotion of regional equality and to equalization; for the federal government, the Charter of Rights and Freedoms — its first objective since the Constitutional Conference of 1968. Ontario, the greatest beneficiary of Confederation, got a resolution of the crisis that threatened to destroy it. Only Quebec, the province that had been promised renewal, got nothing. The *Constitution Act, 1982*, put into our law and constitution the "agreement without Quebec." It could not possibly be acceptable to any government of Quebec, no matter what political party formed it. So the first "Yes" to federalism — the "Yes" in 1980 — ended with what many Quebecers saw, and still see, as a slap in the face.

As seen in Quebec, there was a second "Yes" by Quebec to federalism, the Meech Lake Accord — and what many in Quebec regard as a second rejection by English speaking Canada. The Parti Québécois government, in power during

the events of 1981 to 1982, was replaced in December 1985, by a pro-federalist Liberal government led by Mr. Bourassa. In May 1986, the new government unveiled the "Five Points" on the basis of which Quebec would be prepared to accept the *Constitution Act, 1982*. (The Act was, and is, legally binding on Quebec; it was, and still is, acceptance by the government and the people that is lacking.) The proposal was much more moderate than the changes to the constitution sought by various Quebec governments — Liberal, Union Nationale and Parti Québécois — in the discussions from 1968 to 1981. To make the "Five Points" acceptable to the other provinces, four of them were made to apply to all provinces. Only one was left to apply to Quebec alone: recognition of it as a "distinct society." The agreement emerged on 30 April 1987, as the Meech Lake Accord, and was put in legal form as the *Constitutional Accord, 1987*, in June of that year.

The legislature of Quebec formally approved the Accord on 23 June 1987. By that action, according to the constitutional interpretation officially accepted, a clock started ticking — three years to get the approval of the Parliament of Canada, and the other nine legislatures. On 23 June 1990, the time ran out and the Accord died. Technically, it was the lack of approval by the legislatures of Manitoba and Newfoundland that killed it. More fundamentally, it was strong opposition in most parts of English speaking Canada. Polls after the demise of the Accord showed that more than 60 percent of Canadians outside Quebec considered that it was a good thing that "Meech had died." Only some 30 percent registered the opposing view.

There was no immediate explosion of wrath in Quebec, as some had feared. 24 June, St. Jean Baptiste Day in Quebec, was rather a day of euphoric rejoicing in great popular demonstrations in Montreal, Quebec City and elsewhere in the province. The blue and white fleur-de-lis was everywhere — the symbol of a sense of common purpose. It is not surprising that the reaction seemed to confirm the comforting forecasts that nothing serious would happen if Meech Lake was rejected. In fact, the unity and joy of 24 June had a sombre meaning for Canada. It meant that separatists and federalists in Quebec, sharply divided for 20 years, were now together — they had *all* been rejected by English speaking Canada. They had tried twice to say "Yes" to a renewed federalism and they had been rejected each time. Quebec could now, on its own and with a clear conscience, decide what its future should be. And the 60 percent majority opposed to sovereignty association in the referendum of 1980 became a 65 percent majority in favour of sovereignty with or without association.

Apart from being the second "Yes" to federalism, the other thing that gave fundamental importance to the Meech Lake Accord in Quebec was its recognition of Quebec as a "distinct society." The distinct society clause did not confer any new legislative powers on the province of Quebec. That was made clear and specific in what would become subsection 4 of section 2 of the proposed

amendment to the constitution. The importance of the clause was two-fold. Symbolically, it would give constitutional recognition to the unique society of Quebec — the only province with a French speaking majority. Recognition of the English speaking minority in Quebec was there and was important, but it was for the French speaking majority, with over three hundred years of tenacious adherence to their language and culture, that the recognition was fundamental. It would be the first specific constitutional statement that they existed as something different — within Canada, but distinct.

The clause would do one other thing. It would require that “the Constitution of Canada shall be interpreted in a manner consistent with ... the recognition that Quebec constitutes within Canada a distinct society.” That could not change the basic constitutional powers of Quebec — subsection 4 made that clear. It did, however, mean that if Quebec took legislative action to protect the French language and culture, and if that action was challenged in the courts, the “distinct society” would be a factor the courts would have to take into account.

Any possible restrictions on the rights to use English in Quebec, in protection of French, would have to be shown to be “reasonable limits prescribed by law” and also “demonstrably justified in a free and democratic society” (section 1 of the Charter). However, what was “reasonable” and “justified” in a distinct society that was predominantly French speaking might be more generously interpreted by the courts than if the society had not been declared distinct by the constitution. In other words, there was substance as well as symbolism. However, the substance was within the limits of the present distribution of powers and was subject to interpretation by the courts within the Charter provisions.

#### THE VITAL IMPORTANCE OF THE ACCORD

The French language and culture are the core of the identity of Quebec. For French speaking Quebecers, their erosion and loss would mean the end of their most fundamental value; the thing that had sustained their society and made it different from any other society in the western hemisphere over more than three hundred years. The distinct society clause was thus the essential condition for acceptance of the *Constitution Act, 1982*, and the Charter of Rights and Freedoms.

Quebec had never agreed to the Charter. It had its own charter of rights, as comprehensive and as liberal as the Canadian Charter but with language approached in a manner protective of French. The view predominantly held elsewhere in Canada that rights under the Charter were for individuals, and had to be the same everywhere in Canada, took no account of the claims of French speaking Quebec to a collective right in the preservation of its French language, culture and unique character. A Charter that made no room for that fundamental

value could not be acceptable to Quebec. The distinct society clause was the least that could be done to meet it.

The double acceptance of federalism by Quebec in 1980 and in the "Five Points" of 1986 including what became the distinct society clause, followed by failure in each case by the rest of Canada to react positively, have also to be seen in the context of 25 years of frustration in trying to get the Canadian constitution changed. It was in February 1965, in its Preliminary Report, that the Royal Commission on Bilingualism and Biculturalism first reported that "Canada, without being fully conscious of the fact, is passing through the greatest crisis in its history." "The source of the crisis," it said, "lies in the province of Quebec...," where "...the state of affairs established in 1867, and never since seriously challenged, is now for the first time being rejected by the French Canadians of Quebec."

The constitutional conferences launched by Prime Minister Pearson three years later, in February 1968, were "to embark upon a comprehensive re-assessment of the Constitution" that would be "both broad and deep ... a total review." The objective was agreement on a revised constitution that would meet the concerns of Quebec while preserving a strong central government and being acceptable to Canada as a whole. The Victoria Conference of June 1971, came close to agreement on major changes but, in the end, it failed. The election of the Parti Québécois to power in Quebec in 1976 was in part a reflection of ten years of frustration over the lack of any progress towards constitutional change. There seemed to be ample evidence that the Parti Québécois was right — "federalism cannot be reformed" — leaving sovereignty association the only solution to ensure the future identity of French speaking Quebec.

That background provided the basis for the tensions and animosities of the referendum in Quebec in 1980, and made more urgent the need to deliver on the promise that there would, at last, be a renewed federalism. It also added to the fury of the reaction to the "agreement without Quebec" in 1981. All of that frustration over 25 years, and all the tension that divided Quebec during the referendum campaign of 1980, must be understood in order to appreciate why the rejection of the Meech Lake Accord has had the profound effect we see today.

In the view of most of its leaders of opinion, Quebec has made every reasonable effort to achieve arrangements under which it can find its future within a renewed federalism. They see English speaking Canada, by its stubborn unwillingness to accept even modest change in the constitution, as forcing Quebec to abandon its once-preferred federal course and to choose another way.

## THE VIEW FROM THE WEST

While opinions in the west differ, just as they do in Quebec, the preponderant view is just as clear. It could not be more different. In that difference, which is by no means limited to the west but is most sharply etched there, the problem of achieving any agreement that can save Canada whole becomes all too clear.

The west sees Quebec as the spoiled child of Confederation, courted and catered to no matter what party is in power in Ottawa. Quebec was awarded the contract for maintenance of CF-18 fighter aircraft even though the bid from a Winnipeg company was lower and technically superior. That contract, resented all over the west as symbolic of all that is worst in the treatment of the west and of the favouritism for Quebec, must be one of the greatest single mistakes made by a Canadian government. If the National Energy Policy of the Trudeau government demonstrated the colonial exploitation of the west for the benefit of the metropolitan "east," the CF-18 contract made it apparent that a Progressive Conservative government, loaded with seats from the west, was no better. The heart of any federal government was where most seats in the House of Commons are — in Ontario and Quebec.

The only constitutional reform the west can see to change the balance is a "Triple E Senate" — elected, effective and equal in the number of Senators from every province. However, the ease with which the west can be ignored was demonstrated for it by the fact that its years of work for Senate reform received no serious attention until the dying days of the Meech Lake Accord in June 1990 — when it became a possible bargaining counter to buy support for the Accord from Manitoba and from Newfoundland, where Senate reform is equally sought.

The Reform Party, "born out of the discontents and frustrated aspirations of Western Canadians" in 1987, has the support of 41 percent of voters in Alberta, according to polls in November 1990. Its strength is less, but significant in British Columbia. It now has 16 percent of the entire western vote. The election platform of the Reform Party in November 1988, made its first two planks the achievement of a Triple E Senate, and the rejection of the Meech Lake Accord. On the latter, it echoes views widely held in English speaking Canada that run counter to the essentials of Quebec's position. It stands for complete equality of all provinces and squarely against any "distinct society."

Our crisis could scarcely find two major regions of the federation more deeply opposed. Both are dissatisfied, hurt and demanding change. But the reasons are in direct opposition. Neither region has any apparent sympathy or understanding for the other.



## OUR CUP OVERFLOWS

As if the basic Quebec-western difference was not enough, we have two other problems that dim any optimism about the life expectancy of a united Canada. Elijah Harper, the Cree chief who alone in the Manitoba legislature blocked the approval of the Meech Lake Accord last June, symbolized one: the determination of the aboriginal peoples of Canada that their rights and their recognition as a "distinct society" should not be deferred or take any second place to the problems of Quebec.

The aboriginal claim of being relegated to second place is not as strong as they and the media make it sound. Section 37 of the *Constitution Act, 1982*, provided for a constitutional conference within one year which, the section said, "shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada." The Prime Minister was constitutionally directed to "invite representatives of those peoples to participate in the discussion on that item." In fact, the First Ministers' Conference of 1983 had no other item — it was entirely on aboriginal rights, with the representatives of the national aboriginal organizations present. The treatment of the native problem was precisely the reverse of the neglect alleged by Mr. Harper and the native organizations. Aboriginal rights were given first priority in 1982 — ahead of the interests of every other group in Canada, including those of Quebec.

When the conference of 1983 failed to achieve agreement, the 11 governments and legislatures did not let the matter drop. They made the first use of the new amending procedure to provide for three more First Ministers' Conferences on aboriginal matters. They were held in 1984, 1985 and 1987. The conferences did not succeed in reaching agreement, and that fact has led many native spokesmen to dismiss them as insincere and symbolic. The charge is not well-founded. Symbolism could have been achieved with one conference; it did not require four. Serious efforts were made in those conferences, and it is not at all clear that one side alone is responsible for the failure to reach agreement. However that may be, any attempt by aboriginal groups to insist that their rights be considered at the same time as the problems of Quebec would diminish the prospect of resolving our present crisis.

The other problem on top of problems is the tension over language in English speaking Canada. While acceptance of rights for the French speaking minorities in the provinces other than Quebec has greatly increased in the last 20 years, the activities of extremist groups opposed to those rights have created the impression in Quebec of widespread animosity towards all things French. The trampling on the Quebec flag in Brockville last summer was a perfect "visual" for television. The sordid scene was run repeatedly on French-language stations. The reaction in Quebec was bitter. "English only" in Sault Ste. Marie and other Ontario towns did their bit to create an anti-French, anti-Quebec

impression. The French speaking people of Quebec are well aware that the rights of the English speaking minority in Quebec far exceed those of the French speaking minority in any other province, with the possible exception of New Brunswick. With provincial funding for three English-language universities in Quebec, with 79 establishments required by Quebec law to make health and social services available in English, and with the use of English constitutionally guaranteed in the legislature and the courts of Quebec, English in Quebec has a status and a use that French enjoys nowhere in the other nine provinces. In these circumstances, the French speaking Quebecer takes a cynical view of the uproar that Bill 178 and the restrictions on outside signs in English provoked in other provinces. It all has created the impression that the rest of Canada is a hostile environment for Quebec and for its French society.

### QUEBEC AND SOVEREIGNTY

In the unhappy circumstances of 1990, it was clear that the submissions to the Bélanger-Campeau Commission were bound to reflect the rise in support for sovereignty that the polls had shown. It has nonetheless been a shock to find that the great majority of the submissions before the Commission were strongly "sovereigntist." The submissions defending or recommending any form of federalism have been few.

Premier Bourassa's expressed hope that the Bélanger-Campeau Commission would demonstrate the unity of Quebec about its future through a unanimous report seems unlikely to be achieved if he and the Liberal party hold firm to their stated preference for a revised federalism. The tide of support so far for sovereignty is too strong not to find expression in the Commission's report, which it is required to submit by the end of March 1991.

Conceivably, the report may be united on the objectives of Quebec — such as preservation of the French language and culture and its distinct society, control of its own future, a strong economy — but divided on the way to achieve those objectives. Federalists on the Commission may want a first effort at renewed federalism with sovereignty association if it fails, while those of "sovereigntist" persuasion may want to recommend moving to sovereignty directly, with or without association. It seems not improbable that a referendum might, as in 1980, be the only means by which a divided people can decide what Quebec's future should be — or, at least, what Quebec should propose to the rest of Canada.

That is, if anything is to be proposed to the rest of Canada at all. Some submissions to the Commission have urged a direct declaration of sovereignty by Quebec with no negotiations whatever in advance. Such a unilateral declaration is seen as the only way to escape the quagmire of the present amending procedure that destroyed the Meech Lake Accord. An independent Quebec and

a separate Canada could then, it is argued, negotiate about the future, unhampered by the requirements of the *Constitution Act, 1982*.

## THE OPTIONS FOR CANADA

Against this background, what are the options for Canada?

Continuation of the status quo is not, in my judgement, one of them. No provincial political party in Quebec, other than the entirely English speaking Equality Party, would support it. The "Five Points" were the minimum required change in the *Constitution Act, 1982*, for the present federalist Liberal government. The only alternative government, the Parti Québécois, advocates sovereignty, possibly with some economic association if that could be negotiated.

Separation, with no association, is a distinct possibility if no agreement can be reached. The question is whether there is not something between these two poles of status quo and separation that would be better for both Quebec and the rest of Canada, and on which agreement might be possible. It will be tragic if this possibility is not explored as reasonably and unemotionally as possible. I would suggest that there are three options, with varying degrees of probability about them, as practical solutions within the limited time that circumstances may impose.

The first would depend on a willingness in English speaking Canada to return to the recognition that was an essential basis for the *British North America Act, 1867* — the recognition that Quebec really is different. Section 133 of that Act imposed language obligations on Quebec that applied to no other of the four original provinces. They still apply to Quebec and to no other of the present ten provinces, except Manitoba and, since 1982, New Brunswick. Section 22 established geographical divisions in Quebec within a specific one of which each Senator had to reside and hold property, in order to ensure English speaking representation from the areas where they were then resident. There was, and is, no such requirement in the case of any other province. Section 94 gave the Parliament of Canada powers with respect to the uniformity of laws on property and civil rights in the common law provinces, but not in Quebec. The *Supreme Court Act* in 1875 again recognized the distinctive character of Quebec in the requirement for three judges from its civil law system. No other province had a specific provision. The "Five Points" of 1986 as put forward by Quebec were an extension of this underlying principle. They were designed to apply to Quebec and not to any other province. They related to the essential difference of Quebec. It was the other nine provinces, with the newly-invented thesis that all provinces must be treated in precisely the same way in our constitution, that demanded a generalization to all of every change Quebec sought, except the distinct society clause. That generalization, in the *Constitu-*

*tional Accord, 1987*, became one of the main points of criticism of the Accord. It was alleged by critics to weaken the federal government too greatly, especially in its capacity to act in areas of social policy and income security.

It would almost certainly take much more than the "Five Points" to provide a solution in the new climate in Quebec. However, changes that applied to that province alone, and that were demonstrably related to its language and culture, might be better for all of Canada than any other option. Such an arrangement might be rendered more acceptable in the rest of Canada if whatever special powers Quebec secured to protect its language and culture were compensated for in the voting rights of members of Parliament and Senators from Quebec, and in Quebec representation in some of the relevant federal boards and agencies.

The extent and significance of offsetting changes in Parliament and in other central agencies would depend on the areas of special powers for Quebec that were agreed to. Special powers mentioned so far in Quebec have included aspects of communications, culture, manpower training, programs for immigrants, and regional economic development. If the guiding principle about special powers was genuine relevance to the protection and promotion of language and culture, it would seem possible that none of the matters would loom large in the total affairs of state. None would need to impair federal powers in the critical areas that can be effectively handled by the central government alone and that are of general concern to all Canadians.

An "asymmetrical federalism" of this kind would be distasteful to many in English speaking Canada who have come to see "equality of the provinces" as almost inviolable in the last 20 years. Some have tried to erect it into a principle of federalism. It is not. In fact, we have accepted differences and have applied appropriately different treatment for virtually every province over our entire history as a federation. The "equality" doctrine in its modern rigid form is an invention on the part of Canada I come from — the west — born largely of its frustration over its lack of adequate weight in our federal structure and politics. It will be a Pyrrhic solution to that problem if the doctrine is pushed to the point of making it impossible to preserve the integrity of Canada.

The second option would be to do as was done in the *Constitutional Accord, 1987*: generalize and make available to all provinces whatever special powers were agreed to be desirable for Quebec. While this would undoubtedly be more acceptable to at least some of the provinces other than Quebec, it would be open to the criticism levelled at the Constitutional Accord: that it would unduly weaken the federal government. This charge related especially to the right the Accord provided for any province to opt out of national programs, and to substitute a program of its own, for which it would receive financial compensation. The "opting out" provision was alleged by some critics to destroy the

federal capacity to establish national standards in areas of special importance to the poorer provinces, but also to Canadians generally.

The third option would be to accept at last, after more than 20 years of failure, the argument that it really is not possible to reform our federal system in a manner satisfactory to Quebec, on the one hand, and to all the other provinces, governments and interests on the other. Such a conclusion would lead to the next question: would it be best to arrange as friendly a separation of Quebec as possible, with some form of association that protected the interests of both parties? Or, would the best interest of a post-separation Canada be to adopt a hard line, in the process of negotiation, even if that would end in rancorous separation with no association of any kind? If emotions rule, or if strong-arm tactics are impulsively adopted, the hard line, high risk course may well result. I find it very dubious that it would be the best course.

If it is concluded that our federal system cannot be reformed to accommodate Quebec as a member of it, geography still dictates that two countries are then going to live side by side — each with a major interest in economic relations with the other, and each with a substantial minority of its population made up, in terms of linguistic background, of those that are in a majority in the other. Indeed, the new state of Quebec would stand between the two separated parts of Canada. It is possible that an angry separation would inflict more injury on Quebec than on the divided Canada, but, apart from whatever satisfaction there might be to the wrath and resentment in English speaking Canada, there would almost certainly be more damage to it than a rational, planned separation would cause. Certainly it would be more injurious to thousands of people in the Canada of today who have rights and interests that could be protected by a reasoned plan or, alternatively, that could be needlessly compromised by angry disregard. The sensible course would be to quell emotion to the greatest extent possible, and to see what kind of association could be worked out in the best interest of the people of both “after-separation” countries.

“Sovereignty association” has always had a calamitous ring about it — and in a sense it is calamitous. It means the end of a transcendent purpose of Confederation: to create a country in which two peoples of different language and culture could preserve their own societies and their own different values within a single state. To give up this purpose after more that a century of great achievement would be a major failure. However, if failure there is to be, it should not be allowed to prevent us from salvaging as much of a civil relationship as we can.

“Sovereignty association” is what the 12 countries of the European Community have been building since the Treaty of Rome more that 30 years ago. No one questions that the Community has been enormously beneficial to the people of all the countries involved. The proof is in the number of non-member countries standing in line to join. We would be going backward as

Europe goes forward, but we need not go all the way back to the kind of confrontation the European Community is designed to prevent.

Over the three decades of the Community's existence, the European countries have moved by stages to diminish the "sovereignty" aspect of their relationship, and to increase "association" — to the point where Mrs. Thatcher saw too little of sovereignty likely to remain for Britain after the projected next stage of development in 1992. Whether that history of increasing association could be repeated in a Canada-Quebec Community is difficult to say, but it cannot be excluded. "Sovereignty" is no longer the absolute of utter autonomy that it once was, unless a country opts, like Myanmar (Burma) or Albania, for total isolation. So, a rational "sovereignty association" is, in my judgement, the third realistic option for Canada.

Is there not a fourth option — a rethought and redesigned federalism with a completely new constitution? This is frequently urged, often with a constituent assembly as the forum in which to escape the problems of past negotiations and to find new, modern formulations of the distribution of powers between the federal and provincial governments, a new definition of the position of Quebec, new solutions to aboriginal rights and minority language rights, and all the other constitutional difficulties that have plagued and frustrated us for so long. Perhaps it could be done, but there should be no illusion about how difficult it would be — or how long it might take. Simply to state some of the more obvious questions to be resolved is, in my judgement, to say why this is more likely to be a long-term goal than the solution to the immediate crisis.

It is indicative of the magnitude of the task involved in the words "new constitution" that this was the objective of the exercise Prime Minister Pearson started in February 1968, that is, to "embark upon a comprehensive re-assessment of the Constitution," with "conclusions reached at the continuing Constitutional Conference" being referred back to governments for concurrence "as parts of a new constitution."<sup>2</sup> Thirteen years later, precisely one change in the total distribution of legislative powers had been agreed to. The provision, a new section 92(A) in the constitution, made clear the provincial jurisdiction over "non-renewable natural resources, forestry resources and electrical energy," which had not really been in doubt in any case. Many other changes in powers had been discussed at length in meetings of officials, ministers and first ministers, but in no other case could agreement be achieved. The task would be no easier now and the differences of view no less.

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2 *Federalism for the Future: A Statement of Policy by the Government of Canada* by the Rt. Hon. L.B. Pearson, February 1968, p. 44 and 46.

## THE MERITS AND PROBLEMS OF THE OPTIONS

To summarize, I have suggested that there are three practical options before us: a special regime for Quebec within our federation; a decentralized federalism, in which all provinces receive Quebec's status; and a negotiated association of a sovereign Quebec with "the rest of Canada."

There is little question but that the option that would produce the least dislocation to the operation of what is basically a strong and resilient federal system would be asymmetrical federalism; a special arrangement related to the genuine distinctiveness of Quebec as the only political unit in Canada with a French speaking majority. Whether it would be acceptable in Quebec after the battering the Meech Lake Accord received is uncertain. The present mood in Quebec suggests it would not.

Apart from that, the greatest obstacle to asymmetry is the facile doctrine to which I have already referred, that all provinces must be treated in precisely the same way in our constitution. The doctrine of identical treatment is sheer revisionism, flying in the face of our history, not only in relation to provisions for Quebec but for Manitoba, British Columbia, Prince Edward Island and, especially, Newfoundland. All were treated "differently" when they entered Confederation in specific respects that related to their peculiar circumstances and needs. Indeed, recognition of provincial differences began with Confederation itself. New Brunswick and Nova Scotia got additional subsidies not paid to Ontario or Quebec — and New Brunswick got one not paid to Nova Scotia. In 1905, Alberta and Saskatchewan, on becoming provinces, did not get control over public lands but received special subsidies instead. The Quebec "difference" is by far the greatest and most significant, yet the provisions in our constitution that are peculiar to Quebec were designed mainly to protect the English language minority there. Our constitution has a major gap in providing nothing whatever to protect the French-language society of Quebec as a tiny continental minority in their own homeland — the one place in North America where they can have some control over their identity within a surrounding English speaking sea. Special status for Quebec to achieve this purpose is not a privilege to be resented, but is rather an offset to a profound disadvantage.

A further line of objection to any difference in treatment for Quebec is that it would be the entering wedge to a widening separatism. Such a thesis appears to assume that Canada will become a supine country, unable to control future constitutional amendment. There is no substance in it.

There is one other serious problem arising from another aspect of the utter equality thesis. It is the view, strongly held by many in English speaking Canada, that the rights under the Canadian Charter of Rights and Freedoms must be the same for all Canadians, wherever they live in Canada. The rights so cherished are almost entirely individual rights. There is, in section 35, recognition of one category of collective rights — the "Rights of the Aboriginal Peoples

of Canada." What they are has yet to be determined, but by the section they "are hereby recognized and affirmed." The education rights of linguistic minorities as special groups within provinces are also recognized and spelled out in section 23 of the Charter. There is, however, no recognition that the collectivity of French speaking Canadians in Quebec, as a distinctive, organized society within Canada, may also have a legitimate claim to recognition under the Charter, as well as to some means of protection for the values they consider fundamental and that are under threat because the six million people of French speaking Quebec are so small a minority in the totality of North America.

The province of Quebec is the one province that did not agree in November 1981, to the Charter of Rights. The Charter was imposed on it, with legal effect, by the *Constitution Act, 1982*. The "distinct society" clause in the Meech Lake Accord would have required that the constitution "be interpreted in a manner consistent with ... the recognition that Quebec constitutes within Canada a distinct society." The real importance of the provision, apart from its symbolism and its specific recognition of the linguistic duality of Quebec, was, as I have said, in the way the courts might interpret what would be "reasonable limits" under section 1 of the Charter. It is hard to see how any arrangement for Quebec within Canada can be made acceptable in that province that does not make room, within the Charter, for Quebec to protect and preserve its number one objective: the survival of its French society. If some such arrangement is unacceptable in English speaking Canada, the continuation of Canadian federalism will almost certainly be unacceptable in Quebec. I really believe we have to face that fact.

The above conclusion applies to a decentralized federalism as much as to an asymmetrical one. The continued existence of Canada can stand or fall on this one point — a point that depends on whether the rest of Canada is as prepared to recognize that the French speaking society of Quebec is as much a "people," with rights to ensure its own preservation and future, as the "aboriginal peoples of Canada" are. The Charter recognizes the principle in the one case and we see no unacceptable conflict with its basic principles and general provisions. Precisely the same principle has equal validity for the unique situation of francophone Quebec.

A second consideration about the decentralization option, relating to the weakening of the federal government, has already been referred to. The alleged weakening would almost certainly go further than under Meech Lake. Canada is already a very decentralized federation. Our provinces now have much greater power than do the states of the United States, the Federal Republic of Germany and Australia. Canada is less decentralized than Switzerland, but the difference in physical size and in the depth of regional differences in Canada is important. It seems dubious whether more decentralization of powers to the



provinces in general would be a wise solution in the highly competitive, fast moving world of tomorrow.

The greatest difficulty in the third option — some form of sovereignty association — might be in achieving it. There is no provision in our constitution for the separation of a province from Canada. The process by which it might be done, if a negotiated "association" is to result, is uncertain. It is not at all clear just who could, or should, speak and negotiate for "the rest of Canada," or how constitutional status and legitimacy could be given to whatever result might be agreed upon. A method could undoubtedly be devised, but the uncertainty would lead to confusion and delay, with resulting economic damage for both Canada and Quebec.

Even worse than the problem of process would be the enormity of the specific "separation" questions to be decided: the share of the national debt to be assumed by Quebec; the division of federal government assets; the jobs and the rights of federal employees resident in Quebec; pensions and other benefits owed to Quebec residents by the Government of Canada, to name only the most obvious. One that has received less attention is the virtually certain problem of aboriginal rights in Quebec and, arising from that, quite possibly of the boundaries of a separated Quebec.

Sovereignty and self-determination are dangerous viruses to let loose in a multicultural society, especially one in which aboriginal peoples are properly concerned about their own status and identity. If Quebec is entitled to self-determination, why not they? It has been suggested to the Bélanger-Campeau Commission that, at some time after it reports, a referendum would be the right course so the people of Quebec can themselves decide on their future. Some of the aboriginal groups living in Quebec would almost certainly argue that they too should have their own referendum or referendums to see what they, as separate peoples, want to do about their future.

Questions of the small numbers of the aboriginal peoples, of their geographical dispersion and of group differences could be argued against an aboriginal claim for self-determination, but the validity of resisting the claim might be dubious in northern Quebec, especially if the Crees and Inuit living there were not seeking independence, which they could not support, but rather continuance of their own status and that of the territory they inhabit as a part of Canada. The *Quebec Boundaries Extension Act* of 1912 — like the similar Act to extend the boundaries of Ontario — provides that the enormous area then added to Quebec is on "terms and conditions" that include: "That the trusteeship of the Indians in the said territory ... shall remain in the Government of Canada subject to the control of Parliament." Presumably, the condition means something. Whatever it means would almost certainly give rise to problems if the Crees and Inuit either expressed a wish to remain a part of Canada, or sought to have a referendum on the question.

If all of these problems could be resolved, there would still be the difficulty of devising institutions to handle whatever matters were to be under the joint control of a nine-province Canada and a sovereign Quebec in the new "association." The most probable matters would be the currency of the association and the central bank to control it, together with related aspects of fiscal policy, probably defence and, possibly, external relations. With a community of two, in which one member was three times the size of the other, the design of such institutions would be difficult. Equality of representation in institutions and in control over matters of common interest would not be acceptable to the larger partner; dominance by the larger would not be acceptable to the smaller. The European Community is still wrestling with its institutional structures after more than 30 years of existence. It would be much more difficult for two partners of disparate size than for twelve.

Altogether, the greatest single advantage of a solution by adaptation of our federal system is that it would avoid the enormous difficulties that arrangements outside our system would impose. Nor would a unilateral declaration of independence by Quebec, with no negotiation and no association, escape the problems. All but the devising of community institutions would remain, but to be handled in the worst of all climates — a sense of outrage in English speaking Canada that would probably end in unnecessary political and economic injury and that would prejudice relations for years to come.

## CANADA DOES MATTER

Our federal system cannot be as bad as many critics have made it seem in recent years. Canada is one of the most successful countries on earth by any meaningful standard. It is one of the "Group of Seven" most highly developed and productive economies, and has one of the highest standards of living in the world. The fruits of our economy are distributed with less disparity than in all but a few countries. The situation of the less fortunate Canadians is underwritten by one of the best social security programs in the world, with a medical care and hospital insurance system that is unsurpassed. Our systems of education are among the best. Our political institutions provide us with a level of freedom and security known by few other countries. The rights of Canadians are constitutionally guaranteed, with vigilant protection by ombudsmen and with interpretation by courts of unchallenged independence. Why would the people of such a country run the risk of imperilling so much that is good? The shock and agony of political break-up could have painful consequences that are difficult to foresee.

Quite apart from the economic and social damage from separation would be the diminished importance of both parts of what had been Canada internationally and in North America. Both Quebec and the divided Canada would be

diminished and insecure. Each would become more dependent on the policies and the favour of the United States. Each would have less stature in international affairs of concern to its people than they have now as mutually reinforcing parts of a successful, respected country. We would have failed in the most inspiring purpose that has been ours — that of creating and maintaining a unique state with two dynamic societies and cultures living successfully together. We would instead join the list of countries where a narrow nationalism of diminishing relevance stands in the way of the broader relationships that, it is clear, will be the pattern of tomorrow. A two-state association could, in theory, produce such a result — independent states with a relationship of mutual respect and support going beyond economics — but the chance of success after tearing apart are small. The question is why incur the risk if a less difficult, surer path is available?

It is profoundly to be hoped that the Bélanger-Campeau Commission will recommend a further effort to reform our federalism before Quebec takes the plunge of separation. If so, and if the Government of Quebec accepts that wisdom, it is equally to be hoped that English speaking Canada will grasp the offer as one more chance to preserve the great association we already have.

This does not mean that western grievances must be forgotten, but it does mean that irritation about Quebec and constitutional rigidity based on dubious theories should be put aside. If Quebec can find it possible to swallow its anger over the rejection of the Meech Lake Accord and not insist on the "sovereignty" that seems to be its presently preferred solution, the west should be able to recognize that all the "Es" in a Triple E Senate may not be realistic in a federation where one province really is different, and that provinces have not been treated identically throughout our history.

The aboriginals in turn will do their cause no good if they insist that the highly complex issue of their rights must be entirely resolved at the same time that we try to save the country. Progress is being made with land claims agreements, and the rights and freedoms incorporated in them are now added to those that are constitutionally recognized under section 25(b) of the *Constitution Act, 1982*. Renewed constitutional attention is necessary and it will have to build on the work of the four conferences of 1983 to 1987. The best course might be, as in the *Constitution Act, 1982*, a commitment to a constitutional conference within one year or the coming into force of whatever arrangement is reached about our national structure. This time there might also be a commitment to completion of the work within a specified period. This could give the necessary assurance that the problem of aboriginal rights will not be deferred.

Even with the best of resolutions and a determination to agree, the process of achieving agreement on the Quebec question will not be easy. The entirely closed intergovernmental negotiation from 1987 to 1990 was one of the reasons the Meech Lake Accord failed. It cannot be repeated, even if Quebec would

withdraw its stated refusal once more to get into such negotiations involving the other nine provinces. Yet negotiation cannot be public. Only in private will concessions and adjustment of positions emerge. The manner and the time of public participation will have to take into account this reality or negotiation cannot succeed.

In all of this problem there is a risk that we may be confronted, at some stage, by action that is unconstitutional or by an impasse from which no way out can be found that is covered by the constitution. The pressure in Quebec for an early, unilateral declaration of independence, in order to create an "equal to equal" basis for negotiation between Quebec and "Canada," could produce the former. Such action has already been urged before the Bélanger-Campeau Commission. A declaration of independence would create a situation unknown to our constitution, with results that would be illegal and potentially dangerous. The impasse could result if negotiations led to a proposal for constitutional change that then failed, as the Meech Lake Accord did. It is not probable that Quebec would passively accept such a result a second time. It might feel forced to resort to some line of action not covered by the constitution to implement an alternative solution.

Nothing, I think, could be worse for the future relations of Quebec and the rest of Canada. Nothing could be more damaging in immediate financial and economic consequences than the unknowable void produced by action that has no basis in the constitution or in agreement. The effects on international confidence would be disastrous. If constitutional process cannot cover a situation that may emerge, the next best option might be some reasonably defensible form of agreement that might be entered into with a credible form of authority based on popular approval.

In the light of the criticisms of the Meech Lake process, with its lack of public participation, one suggestion has been that whatever arrangement emerges for the future should be put to the people of Canada in a referendum for final approval or rejection. There is no basis in our constitution for a referendum that would have binding effect. To establish one we would first have to amend the constitution. That would involve the entire morass of unanimous consent which is required for a constitutional change in the amendment process. A conceivable alternative might be a two-stage advisory plebiscite: the first stage in Quebec, the second in the rest of Canada.

A Quebec plebiscite, held under Quebec auspices, could first be held so that Quebecers could choose among the realistic options for their future. One probable option would be continued association of Quebec with the rest of Canada, within an altered federal structure in which Quebec could have constitutional certainty of its capacity to protect and promote the linguistic and cultural values of its French speaking majority. Realistically, the other option would appear to be independence, with no certainty of any special association

with the rest of Canada. The problems relating to sovereignty association are so great that presenting it as a realistic option would be misleading. The result of the plebiscite, and of whatever position the Government of Quebec took, would provide the basis for discussion in the rest of Canada with a sense of reality about alternatives that was lacking in the Meech Lake debate.

The second step would be an advisory plebiscite for the rest of Canada. A year, or possibly more, would be needed for the people in the rest of Canada to discuss and to assess the implications of the alternatives. Such discussion could be arranged quite simply by the federal government in discussion with the governments of the nine provinces. The discussions could take place in any way that seemed best. The final phase of public discussion would be the advisory plebiscite. This could be held under the authority of federal legislation after discussion with the nine provinces. The question in the plebiscite would be designed to get an expression of view on the broad lines of a response, or alternative responses, to the position put forward by Quebec.

There would be nothing unconstitutional about a process along these lines. A defensible degree of democratic legitimacy would have been established for whatever course was preferred by the peoples of Quebec and of the rest of Canada, respectively. The process would not be decisive or self-implementing so it would not be necessary to define the locus of majorities or other details. Further negotiation would not be excluded. If, on the basis of the plebiscites and negotiations, an agreement emerged that could validly be considered to have the authority of majorities in Quebec and in the rest of Canada, and of the duly elected governments, there would be a practical legitimacy that, in such unforeseen and special circumstances, would almost certainly withstand any challenge before the courts.

That there would be risks in such a process is obvious. However, we have got into a situation where it is difficult to see any course that is likely to be acceptable, constitutional and free of risk.

For Canada is, without a doubt, facing its greatest crisis.

What we need, above all else, both in Quebec and in the rest of Canada, is dispassionate assessment of both sides of our national ledger. The advantages we have in preserving the stable, democratic, wealthy country we have in a troubled and dangerous world are enormous. The problems inherent in such preservation do not seem to me to be at all equal to the probable cost of failure.

It should not be too much for the people of Canada outside Quebec to recognize that the French speaking society there would be justified in rejecting any political structure that would unnecessarily endanger the protection of its language and culture. On the other hand, it should not be impossible for the French speaking majority in Quebec to recognize that it is not just the Charter of Rights but their own democratic tradition that dictates reasonable limits for measures or powers of protection. There should be recognition too of the value,

in that protection, of preserving a political structure that gives a special weight and some security to another million French speaking people in North America outside Quebec.

Looking at other items on the problem side of our ledger, there is no adequate reason why much needed Senate reform cannot be devised that would do something to meet the just complaint of the west and of Newfoundland about the imbalance of our federalism. So far as our aboriginal people are concerned, their exasperation about justice long-deferred should not obscure the reality that preservation of the political unity of Canada will help, rather than defer, agreement on the definition and better establishment of their rights.

Canada is far too great an asset for all of us to be allowed to slip away. Devising the means to preserve it, and to end our divisive wrangle, is as great a challenge today as was the creation of our federation out of the colonial bickering of the 1860s. This generation must not be the one to fail.