

CAN QUEBECKERS BE A SOVEREIGN PEOPLE?

BY PETER H. RUSSELL

Three years ago, I published the book *Constitutional Odyssey*. The subtitle, *Can Canadians Become a Sovereign People?*, questioned the capacity of Canadians to live up to the new constitutional philosophy that most of them have embraced — the sovereignty of the people.

In the book, I express my doubts about the possibility of a positive answer to my question in this way:

If a constitution derives its legitimacy from the consent of the people, then those who share a constitution must first agree to be a people. There is no evidence that either the québécois or the aboriginal nations have agreed to be part of a Canadian people sharing a constitution determined by simple majority rule. By the same token, there is no evidence that the aboriginal and English minorities in Quebec have agreed to be part of a Quebec people whose constitutional destiny lies in the hands of a majority of the people in that province.

The results of the recent referendum confirm my belief in the veracity of this passage, including its final sentence.

THE MYTH OF A SINGLE "PEOPLE"

Indeed, the strongest message I take from the October 30 Quebec referendum is how deeply divided Quebec is on national lines. If the Quebec electorate as a whole demonstrated anything in the referendum, it is

that they do not constitute a single people. The English-speaking people of the province, the allophones, and several of the indigenous peoples whose historic lands are within Quebec's boundaries indicated, as clearly as peoples can, that they do not wish to be part of an independent Quebec state. Is their will not to be accorded the same respect as the will of Quebec's French majority?

In multinational societies, majoritarian solutions to constitutional differences are both unjust and unwise. Imposing the will of an ethnic majority on minorities who have not accepted being subject to that majority's will cannot provide secure and fair foundations for a constitutional democracy. The logic of this position led me to oppose the 1982 constitutional settlement in Canada. Canada is a federal society in which majorities of the whole have no right to bind all the constituent components of the federation. Proceeding with new constitutional arrangements that were opposed by the province of Quebec and the Canadian majority broke a fundamental understanding at the foundation of this country. Ever since then, we Canadians have been living dangerously, sharing a constitution whose legitimacy is questioned by a constituent element of the political community.

Quebec sovereigntists may contend that their project does no more than inflict on the constituent elements of Quebec society the same injustice inflicted on them in 1982. But surely this is not a case, if ever there was one, where two wrongs make a right. To establish a sovereign Quebec solely on the basis of

the will of its francophone majority and impose that sovereignty on strongly dissenting minorities within its boundaries will not produce a coherent and legitimate constitutional democracy. Nor can it be a means through which a harmonious new nation-state can be forged.

THE DANGER OF NATIONALIST SOLUTIONS

Quebec nationalists cannot push their nationalist projects through to completion, any more than Canadian nationalists can, without abandoning the practice of mutual respect and tolerance that has been the

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essential condition for whatever the peoples of Canada have achieved together as citizens of a single state. Among populations marked by the deep diversity of Canada and Quebec, sovereign solutions — solutions in which one part claims sovereignty over the others — threaten to rupture the civility of the body politic.

Canadians have tried twice — in Meech Lake and the Charlottetown Accord — to repair the damage done in 1982. We all

know how badly these efforts failed. Rather than healing our wounds, these efforts rubbed salt in them. They deepened the rifts in the Canadian political community to a more grassroots level at the very time that Canadians were opting to resolve their differences through popular, rather than elite, accords.

Prime Minister Chrétien's panic-stricken promise of change in the eleventh hour of the referendum campaign may lead to yet another attempt at constitutional reconciliation. One cannot be optimistic about the success of such an effort — especially if its centrepiece is recognition of Quebec as a "distinct society." In the present context, this symbolic gesture would likely be too little to stem the tide of nationalism for Quebec, but more than enough to arouse resentment of Quebec in the rest of Canada. The distinct society clause should be retired to the museum of constitutional history as a curious piece of constitutional artillery from an earlier and unsuccessful campaign.

THE 1997 CONSTITUTIONAL REVIEW

The review of the amending formula that section 49 of the *Constitution Act, 1982* requires before April 17, 1997 is slightly more promising. An elite consensus might be reached on re-establishing Quebec's historic constitutional veto, if, as in the Meech Lake Accord, all the provinces are given a veto and aboriginal peoples have a veto over provisions that affect their rights. A rule that prevents constitutional change from being imposed on any of the constituent elements in our federation is in accord with the founding principle and best constitutional practice of our country. However, a rule of unanimity is likely to fare badly in a popular referendum against those who believe some constitutional changes are so impor-

tant that they should be proceeded with despite their risk to national unity.

Even if some modest constitutional or administrative restructuring of the Canadian federation is achieved in the next year or so, this is not likely to persuade Quebec secessionists to abandon their project. If the PQ government survives the next Quebec election and begins to organize a third referendum on Quebec sovereignty, the government of Canada must not duplicate its performance in the recent referendum and chicken out of stating clearly the matters that will have to be negotiated in the event of a win for the Yes side. These matters include the collective rights of the national minorities in Quebec whose clearly expressed will is to remain in Canada. In taking this position, Ottawa must make it clear that there will be no non-negotiable issues — including the territorial boundaries of a sovereign Quebec.

SOME SOBERING ADVICE

Such a position will give Quebec voters a better sense of the issues with which they will have to deal in the event of a referendum win by the sovereigntists. No doubt, such a tough stand will increase the tensions associated with another referendum campaign. But it should have the sobering effect of enabling Quebecers to recognize that they are as far from being capable of acting as a sovereign people as are Canadians.

In these circumstances, the most prudent policy for Canadians is one of strict constitutional abeyance — at least on the big issues that divide us. But asking our constitutional agitators and junkies to be prudent is like urging smokers to switch to chewing gum. ❖

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THE QUEBEC REFERENDUM: FROM POLLS TO BALLOTS *from page 37*

are, thus, forced to consider these two events as having occurred simultaneously, which leaves us with three breaking points that separate the campaign into four periods.

For these four periods, the average percentage of "yes"-vote and "no"-vote intentions are as follows:

	Yes	No
	percent	
Before Garcia	39	45
Between Garcia and Beaudoin-Bouchard	43	45
Between Beaudoin-Bouchard and Martin	43	44
After Martin	46	41

THE BOUCHARD FACTOR AND THE FINAL VOTE

Contrary to what most analysts have said, it is not obvious that the promotion of Bouchard to the de facto leadership of the Yes side made the difference, providing the impetus for the surge of "yes" votes. Rather, the Yes side appears to have made significant progress *before* Bouchard became the chief spokesperson for the Yes campaign, such progress coinciding with the strong reaction to Garcia's "crush" statement. Furthermore, the arrival of Bouchard seems to have made little difference in voting intentions as a simple comparison between scores in the second and third periods readily indicates. On the other hand, *after* Martin's "one million jobs" pronouncement, the "yes" votes jumped three points and the "no" votes dropped three points, thus creating a significant five-point spread favouring the Yes side.

Consequently, it can be argued that Bouchard's arrival was not the turning point in the campaign but, rather, that the campaign tides were associated with adverse popular reactions

to statements made by business spokespersons.

What about the great discrepancy between the scores — 46-percent Yes to 41-percent No — of the fourth period ending October 26, and the actual ballot results of 49.4 percent for the Yes and 50.6 percent for the No?

Informed opinion explains it by allocating the "undecided" in voting intentions by a ratio of 3 to 1 in favour of the No side. Although such an allocation ratio does, in fact, correspond to what appears to have happened in the last few elections and the referendum in Quebec, I tend to find this procedure somewhat unsatisfactory in this instance.

Theoretically speaking, last-minute deciders are best conceived of as "swinging with the swing." For this to happen, there must be a detectable momentum toward a given side in the last days preceding an election. We know for a fact that such was the case in the last two Quebec elections of 1989 and 1994 and in the referendum of 1992, opinion movements being detected in favour of both the Liberal Party as well as the Charlottetown Accord.

THE YES MOMENTUM: THE FINAL PUSH

Our polling numbers of the 1995 campaign definitively indicate a momentum in favour of the Yes option up until October 26, the Thursday preceding the vote. Events of the final few days before the referendum must, therefore, be taken into account to understand how vote intentions translated into a majority for the No side. More specifically, one thinks of the televised address to the nation by Prime Minister Chrétien on Wednesday night, followed by Lucien Bouchard's reply and the rally for the Yes held at the Verdun arena. Fi-

nally, the huge rally at Place du Canada on Friday by people from all over Canada cannot but have had an impact.

The incredible 93.48 percent turnout of eligible voters on referendum day offers another clue in the explanation of the final results. In a system where voting is not mandatory, such a turnout is a product of a set of extraordinary circumstances. In the present case, the fact that the issue was much more dramatic than in 1980 or 1992 and that everyone expected the final results to be extremely close certainly contributed to the exceptional turnout score. But these two factors are not quite sufficient to explain the turnout. When nearly every voter physically capable of voting actually does so, it must be the case that both sides have mobilized their maximum potential support. Both sides were thus riding a momentum on October 30, the Yes momentum finding its long-winded source in a reaction to business arguments against Quebec sovereignty, and the No momentum in a final desperate sprint to save Canada. ❖

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