

political system of Canada would feel threatened and try to make Quebec more dependent on Canada. This happened in 1982 when the *Charter of Rights and Freedoms* was passed.

A "no" vote would forever destroy every chance for Quebec to separate and Canada would pay a terrible price. Quebec nationalism

would turn inward on itself and fester. Canada would suffer the negative consequences.

Deferring the referendum is likely to generate an equally negative reaction on the part of the federalists who want to get rid of Quebec nationalism. We will then have to rely on those English Canadians who are

Quebec's friends and who fought for the ratification of the Meech Lake accord. This is not much to hope for, but there is not much else.

Christian Dufour is a Professor at the École nationale d'administration publique in Montréal. This article has been translated from French by Marilyn Lambert.



THE LESSONS OF MEECH LAKE AND CHARLOTTETOWN

by Richard Simeon

Meech Lake was an attempt at a focused, limited, reform aimed primarily at meeting Quebec's five demands for signing on to the 1982 *Constitution Act*. In substance, it was defeated because it failed to address the much broader set of constitutional agendas that had emerged since 1982. In its process, Meech represented the failure of the strictly intergovernmental constitutional review process to respond to the changed political dynamics generated by increased demands for citizen participation generally and by the 1982 requirement of legislative ratification for constitutional amendments.

Charlottetown was a response to these objections. Rather than being limited and exclusive, it sought to be inclusive, embracing a vast range of changes. And, unlike Meech, the process embodied a far greater range of consultation and debate in the early stages, an expanded table in the intergovernmental negotiations, and, of course, popular judgment in the referendum of October 1992. If Meech demonstrated the failings of a closed process and a narrow agenda, Charlottetown demonstrated the difficulties associated with an expanded agenda and a more democratic process.

The political circumstances surrounding the Meech debate between 1987 and 1990 and the Charlottetown process in 1991-92 are in many ways different from the circumstances we face in 1995. The fiscal crisis weighs far more heavily over the whole process than it did before. In Quebec, the PQ holds power. In Ottawa, the majority Liberal government maintains a level of trust and confidence far higher than that of the previous Mulroney government. On the other hand, with the Bloc forming the official opposition and the Reform party constituting the alternative government for English Canada, Ottawa enters this debate without the broad cross-party agreement on constitutional issues and the unity question that has characterized previous governments. This will make it harder for the Liberals to speak unequivocally for Canada during and especially after the referendum campaign.

Perhaps the most general lesson of Meech and Charlottetown was to underline and reinforce the mutual incomprehension between Quebec and the rest of Canada (ROC). As Richard Johnston and his associates show, Meech failed in large measure because citizens in the rest of Canada rejected the concept of Que-

bec as a distinct society and more generally the concept of a Canada constituted by the presence of two (or more) national communities. Individualist Charter values ruled out the more collectivist implications of distinct societies. New identities—gender, multiculturalism and others—challenged the traditional pre-eminence of linguistic and regional identities as the basis for constitutional discourse. Increasingly, Canadians outside Quebec debated their own society in terms that, if not hostile to Quebec, no longer saw national unity in the traditional sense as the chief challenge facing Canadians.

In the Charlottetown round, all the differing interpretations were on the table. In the end, however, the single most important reason for rejecting the accord outside Quebec was that it made too many concessions to the province; and the single most important reason for rejecting it in Quebec was that it did not respond sufficiently to Quebec's aspirations. Indeed, the two communities saw the Charlottetown process in dramatically different terms: for Quebec, it was the search for "Meech Plus"—to wipe out the bitter experience of the "rejection" in Meech. It was to respond to the heightened expectations for greater powers generated by the wave of nationalist feeling in the province

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and by the work of the Bélanger-Campeau commission and the Allaire report—all of which were a direct consequence of the Meech failure.

English Canadians saw the process quite differently: it was to be the "Canada Round"—responding to the constitutional aspirations that had been ignored in Meech—notably, the Senate, aboriginal self-government, and an expanded "Canada clause." Thus, in the period leading up to Charlottetown, it was as if there were two quite different and disconnected processes going on; at every level the two solitudes were as deaf to each other as at any time in our history. Quebec and the rest of Canada were united, but only in their rejection of the accord.

The referendum defeat had other legacies as well. First, of course, it led directly to the results of the 1993 federal election. While the defeat of the Conservatives has many explanations, one of them certainly is the party's inability to maintain its coalition including westerners and nationalist Quebecers. It was that coalition which initially made it possible to achieve a settlement in Meech, but it was the strains of the Meech and Charlottetown debates that killed it. The election represents the dropping of the second shoe: the referendum defeat provided an enormous impetus both to the Bloc and to Reform.

In Quebec, the normal operations of an alternating party system may well have led to a PQ victory in the 1994 provincial election. But here, too, the failures of Meech and Charlottetown, especially the former, ensured that the PQ would articulate its independence option more forcefully and directly than it might otherwise have done.

WHAT IF?

Where would we be today if Meech or Charlottetown had, in fact, passed? At the time Meech was negotiated, the drive appeared to have gone out of the separatist movement. The accord itself responded fully to the modest list of constitutional requirements then being articulated by the Liberal Quebec government. The symbolic reassurance it provided Quebec might well have taken further wind out of the separatist sails, at least for this generation. And in the rest of Canada, despite the deep fears about the implications of Meech for the Charter, or for national standards, it is likely that hostility would have faded fast as it was discovered that Meech was more a restatement of the status quo than a radical change.

But the failure of Meech immediately provoked a massive reassertion of the nationalist drive among both separatists and federalists. This was a direct consequence of the perceived "rejection" of Quebec following so soon on the heels of the "exclusion" of 1982.

It is harder to predict what might have happened if Charlottetown had passed. It was a much more limited response to Quebec opinion that had emerged after the Meech defeat. But now nationalist opinion was fully mobilized; even if the referendum had won in Quebec and across the country, the PQ would still have found fertile ground. Moreover, the working out of the accord—as the new Senate was constituted, aboriginal self-government was negotiated, and powers were adjusted—would have ensured that constitutional debates would have continued, even if it had been passed.

Thus, the political legacies of both of these failures are: a revitalized separatist movement, a regionally and linguistically fragmented national Parliament, a deepening of

the two solitudes, and the possibility of a new stage in the crisis looming. There are no simple lessons to draw from the past; nevertheless, these earlier experiences have done a great deal to shape the political context of current events and to constrain the range of alternatives that are open to us.

PROCESS

If Quebec were to vote for independence, one of the first questions would be: who would be the interlocutor for the rest of Canada in the resulting negotiations? The PQ assumes it would be the government of Canada.

In the present context, it is possible that the provinces would defer to Ottawa as the prime negotiator, but it is highly unlikely. Provinces would correctly argue that their interests are as much engaged as Ottawa's. This means that their imprimatur would be necessary to ratify any of the constitutional changes that would follow from the dissolution of the federation. With the number of ROC negotiating parties increasing to 11, it is unlikely that their interests will converge.

Second, there are strong constitutional grounds for believing that aboriginal peoples, especially in Quebec, will have a critical role to play and perhaps even a veto. Politically, this claim has been immensely strengthened by the Meech and Charlottetown experiences. It was Elijah Harper's raised feather that helped stop Meech. In Charlottetown, the major aboriginal groups were central participants at the table. Arguably, the precedent or convention has been established that aboriginal consent to major constitutional amendment is required. Once again, the table has become larger.

Even more clearly, the experience of Meech and Charlottetown established citizens as direct consti-

tutional players. Again, it can be argued that the use of the referendum in 1992 established the rule that no major changes are permissible without popular ratification. This precedent will greatly strengthen the argument that any settlement with an independent Quebec should also be subject to a national referendum. It seems clear that citizens are no longer prepared to delegate decision making about their constitutional futures to their elected leaders. This legacy of recent experience can be expected to be repeated a fortiori in an independence situation.

Thus, a time of immense political tension will require state-craft of a very high order. Yet, political leaders are likely to find themselves with little room to manoeuvre. Meech and Charlottetown democratized the constitutional process. Both demonstrated the inability of politicians, however skilled, to manage this kind of political process. This should give pause to those who believe that negotiating independence can be managed effectively by reasonable governmental negotiators with a free, autonomous hand. If we have yet to find an effective process for achieving constitutional change within Confederation, it is equally obvious that we have no process for negotiating an end to the federation.

NARROWING THE OPTIONS

A continuing thread through constitutional negotiations in recent years has been the search for a "third option," something between the status quo and independence. This is what the P  pin-Robarts task force sought, as did Claude Ryan's beige paper following the election of the PQ in 1976. This in many minds was the undefined "renewed federalism" proffered to Quebec voters in the 1980 referendum.

Distinct society, special status, or statut particulier were all versions

of "asymmetrical federalism," the political scientists' most recent contribution to constitutional phrase making ("intrastate federalism" linked notably to Senate reform was the previous entry). To Quebec federalists, asymmetry promised the possibility of national affirmation and extended powers for Quebec without the economic and political risks of separation. To a considerable number of English-Canadian intellectuals, especially on the left, it had the advantage of being a plausible solution to the impasse and of

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maximizing the fit between citizen preferences and institutional structures by permitting Quebec the expansive provincial government it wanted while allowing English Canadians to have the more powerful central government they allegedly wanted.

The notion of asymmetry has, however, failed to develop any resonance in the wider population. In the Meech Lake debate, it was decisively trumped by Clyde Wells's competing notion of the "equality of the provinces." Despite the extensive amount of asymmetry in the functioning constitution, the doctrine of provincial equality has ruled it out as a constitutional principle. Long-time opponents such as Pierre Trudeau saw it as leading inexorably down a slippery slope to Quebec independence, as Quebec would seek ever greater powers in an open-ended process with no logical stopping place until Quebec's ties with Ottawa are entirely cut. Others argued that any fair method of achieving

asymmetry would have to link increased provincial powers in certain areas with a diminution of Quebec influence with respect to the same issues in Ottawa.

The point here is not to argue the virtues or the vices of asymmetrical federalism, but to stress the implications of Meech and Charlottetown for its political feasibility. As we have noted, opposition to the distinct society clause in Meech, the most modest conceivable version of asymmetry, was strong. In the 1992 referendum campaign, clear majorities outside Quebec were opposed to recognition of the distinct society (though even greater numbers opposed the 25 percent guarantee for Quebec's membership in the House of Commons). Since then, opposition to the idea has strengthened rather than weakened. One survey showed that 70 percent of Canadians outside Quebec would reject special status, *even if* that refusal were to lead to separation. A June 1994 survey found 83 percent opposed to the idea.

In February 1995, a Leger and Leger survey commissioned by the PQ made the same points:

- 80 percent of respondents outside Quebec believed that Quebec should be treated in the same way as other provinces; 10 percent preferred statut particulier; and 4 percent a sovereign Quebec;
- 72 percent agreed with the statement that the government of Canada should not offer greater powers to Quebec, whatever the referendum outcome; only 17 percent agreed that Canada should offer more powers to Quebec if that made it possible to keep Quebec in Canada;
- in the event that Quebec voted no, 77.5 percent would opt to

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maintain the constitutional status quo, and only 14 percent would agree to new powers for Quebec;

- asked whether the Québécois form a distinct society within the Canadian people, 66.1 percent said "no"; and
- perhaps most striking, asked whether they would grant Quebec the Meech Lake accord, 75 percent said no.

These are striking figures. If the middle ground between the constitutional status quo and full independence for Quebec was completely eroded during the debates over the Charlottetown and Meech Lake accords, why would English Canadians apparently be *more* willing to negotiate linkages with an independent Quebec than they are to negotiate varied powers *within* Confederation? Thus, in the same Leger and Leger poll, two-thirds agreed that Quebeckers have the right to decide by referendum whether to remain part of Canada; 49 percent agreed that in that event Canada should recognize the sovereignty of Quebec; and 58 percent would be in favour of maintaining some form of economic association with an independent Quebec. It is not at all clear why it should be easier to see Quebec as an independent country than as a province, however distinct.

The other paradox has an element of tragedy. All accounts of Quebec opinion seem to suggest that it consists of a minority who are committed to independence, another minority of committed status quo federalists and a large group in the middle that wavers between "soft nationalism" such as sovereignty association and a reformed federalism. It is, of course, within this group that the outcome will be decided. The irony is that the political process as it

worked in Meech and Charlottetown has ended up presenting Quebeckers with two stark alternatives—*independence and the status quo*—that are demonstrably minority opinions and that deny them the opportunity to vote for the options that most appear actually to prefer. It means as well that proponents of the "no" are simply unable to play the "renewed federalism" card that was so successful in 1980.

This, of course, is also the conclusion drawn by the PQ. Reform is impossible within the federation; hence, we must leave it. It may need to be qualified. Thus, federalists can argue persuasively that the status quo is not static. The existing constitutional framework has been enormously adaptable and changeable in the past and there is no reason not to expect this to continue in the future. This is true, but "flexible federalism"—which could even embody a considerable degree of *de facto* asymmetry—has a somewhat bureaucratic ring to it. It does not have the symbolic ring of explicit recognition that distinct society does.

The same might be said for the non-constitutional generalized decentralization to which Ottawa seems currently to be moving. Federal withdrawal from shared areas, disentanglement, and conversion of transfer programs (which already have few conditions) into bloc grants may be attractive, but likely more so to governments than to citizen voters. In addition, defenders of asymmetry, such as Judy Rebick, would argue that such an evolution would deprive many English Canadians of the solution they would opt for if given a choice—namely, a stronger central government.

Defenders of federalism, then, have one hand tied behind their backs. Meech and Charlottetown were both predicated on widespread arguments that status quo federal-

ism was a failure that must be reformed. It is harder now to turn around and defend it without qualification.

Thus, the effect of Meech and Charlottetown is sharply to narrow the constitutional alternatives and to rule all of the middle positions off the table. There may be advantages in this clearing of the air as one by one the ambiguities and contradictions have been stripped away. Now we are faced with a clean, once-and-for-all, no-false-illusions choice. Let's just get it over with.

The flaw in that argument, of course, is that such a clean choice is itself an illusion: a "yes" vote will not free us from the tarbaby since it will inevitably entail a drawn-out, tension filled, complex process of disentanglement, along with the equally difficult need to reconstruct what is left of Canada. After previous alarms about the "knife to the throat," it is highly unlikely that a "yes" vote would be followed by new offers of an asymmetrical federalism from the rest of Canada. A "no" vote is also likely to keep the constitution on the table in Quebec. It is even less likely to provoke offers of renewal from the rest of Canada. More likely is either ROC triumphalism—"the dragon was a myth; we have slain the dragon"—or ROC complacency—"there is no problem." And that will give new ammunition to later *indépendantistes*.

Thus, we have a heavy price to pay for the failure to find a solution in the Meech Lake and Charlottetown rounds. It has led us to a dead end with no easy exits. And it may have cast our constitutional discourse into a framework that satisfies neither side.

Richard Simeon is a Professor of Political Science at the University of Toronto.

