

"Politics of Catharsis"
continued from page 49.

horses" and remember that it is in Canada's self-interest to respect Quebec's exercise in democracy—he believes that if the rest of Canada would behave rationally, then separation could be smoothly and amicably negotiated. To Professor Monahan, creator of this curiously Canadian aspiration, "cooler heads" means something quite different. In his view, it is precisely because the costs of separation will be so great that cooler heads within Quebec will realize, as a matter of *their* rational self-interest, that the game is not worth the candle.

Surely the arctic constraints of a "cooler heads" discourse cannot be imposed on a debate that promises to be hot as hell. Canadians inside and outside Quebec are far more likely, in the words of our as yet silent prime minister, to speak "straight from the heart."

Fasten your seat belts—it could be a bumpy ride.

Jamie Cameron is Director of the Centre for Public Law and Public Policy, and Associate Professor at Osgoode Hall Law School.



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Write or fax us at:

Canada Watch
Osgoode Hall Law School
Room 454
4700 Keele Street
North York, Ontario
M3J 1P3

Tel: (416) 736-5515
Fax: (416) 736-5546

THE MORAL CASE FOR SECESSION

by *Guy Laforest*

Why should Quebec want to secede? What are its moral reasons? Isn't Canada already the most decentralized federation in the world, and the best country in the world according to the United Nations? Isn't it clear, as David Cameron insisted recently in *Canada Watch* (November/December 1994), that Quebecers enjoy liberal individual rights and that Canada is a truly democratic state? Are we not witnessing the hijacking of the whole citizenry of Quebec by the small, only 2,000-people strong (to borrow a figure from Laurier Lapierre), nationalist elite? These are huge questions. I shall try to give at least the contours of a reply to the first two questions, those concerning the morality of sovereignty and secession.

FEDERALISM AND POLITICAL COMMUNITY

Donald Smiley had gained a great reputation as one of the most eminent scholars of the century on Canadian federalism. When his students and his peers decided to honour the York University professor with a collection of articles, it was not by accident that they entitled it *Federalism and Political Community*. Smiley knew all too well what was proper to do to one's fellow compatriots in a truly federal political community. To say that he considered improper what Canada did to Quebec in 1982, when the constitution was patriated, would be a remarkable understatement. As he put it,

... an exercise in constitutional review and reform [aimed at] ... more harmonious relations between Quebec and the wider Canadian community has [in-

stead] involved a betrayal of the Quebec electorate, a breach of fundamental constitutional convention, a recrudescence of Quebec nationalism, and an even more serious Quebec challenge than before to the legitimacy of the Canadian constitutional order.

Smiley's title, "A Dangerous Deed," and the title of the book in which this particular piece appears, *And No One Cheered*, are delightfully anachronistic. From Smiley we receive a crucial insight: it is plausible to argue that a major breach of federal trust occurred in 1981-1982 when the powers of Quebec were reduced without its consent. A federal community is governed by moral rules: the required consent of the constituent units when changes reduce their legislative prerogatives is one of those rules. Actually, it may be the most important one. My former mentor at McGill, James Tully, uses the following expression to refer to that rule, or convention, of federal morality: "What touches all must be approved by all." (In Latin, *quod omnes tangit*.) (See James Tully, "Diversity's Gambit Declined," in Curtis Cook, *Canada's Constitutional Predicament After 1992*.)

THE ARK AND THE COVENANT

Donald Smiley was not content to criticize the way in which patriation was achieved. A few years later he went on to argue that Canada's official language policies, enshrined in the Charter of Rights and Freedoms, were "absurd." This, despite the remarkable progress in English-speaking Canada of what Peter Russell calls "Charter patriotism." Through the Charter of Rights

and Freedoms, which formed part of the patriation package, citizens have developed a new sense of national allegiance to Canada. But Smiley argued that:

In general terms, normative arguments which equate English in Quebec and French outside Quebec are suspect. We need here to remember the sound principle advanced by Aristotle that justice is treating equals equally and unequals unequally. The English language in Quebec has a number of important advantages The opposite circumstances prevail in respect to French outside Quebec. To repeat, the equation of the two official-language minorities allied with suggestions that the position of one should be enhanced or restricted to bring it into conformity with the other should be rejected. . . .

... Yet the Constitution Act, 1982 was put in place in the face of the opposition of the legislature and government of the province, and restricted the powers of Quebec in respect to the crucial areas of language and education. ("Language Policies in the Canadian Political Community," in J.W. Lapierre, V. Lemieux and J. Zylberberg, *Être contemporain. Mélanges en l'honneur de Gérard Bergeron*, pp. 284 and 290.)

The articles referring to language policies, considered absurd and unjust by Smiley, were not a minor dimension of the patriation project. It has been argued by Mr. Trudeau's biographers, Stephen Clarkson and Christina McCall, that everything else in the Charter of Rights and Freedoms was put into place to camouflage the centrality of those articles. The target of Smiley's criti-

cism is the very core of the Charter. Is there any evidence of this? It is well known that Mr. Trudeau rejected the idea of a "notwithstanding clause," enabling governments to subtract themselves, at least temporarily, from the effects of some sections of the Charter. But when political circumstances forced him to accept a legislative override, the resulting text drew a distinction between fundamental liberties, such as freedom of expression, juridical

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guarantees, and general equality rights, which are subject to the override, and language rights, which are not. There is, indeed, a hierarchy of rights in the Charter, and language rights are on the superior plateau. Why? I surmise that liberalism was not the only objective in the minds of the founders of the 1982 order. They had another goal: nation-building. As Tom Axworthy states:

The attachment of Canadians to the concept of a national community, and to a belief in the strength of shared values, claims, obligations and opportunities, is a fundamental objective of a nation-building quest. The Charter was the ark and the Covenant in the federal vision. ("Colliding Visions: The Debate Over the Charter of Rights and Freedoms 1980-1981," in R. Elliot and J. Weiler, *Litigating the Values of a Nation*, p. 14.)

If the Charter was the "Ark and the Covenant" of the federal vision,

and if language policies are the "Ark and the Covenant" of the Charter and, furthermore, if those language provisions based on symmetry and uniformity are absurd, then isn't it fair to conclude that, for Smiley, logically, the whole patriation exercise and results were, precisely, absurd? Donald Smiley is not with us any more and, in his absence, I will refrain from going that far in the interpretation. However, to borrow a phrase from Richard Simeon, "Every student of Canadian federalism is one of Smiley's people." (*Federalism and Political Community*, p. 409.) As such, we have every right to interpret his heritage for ourselves.

If the process leading to the 1982 Constitution was morally flawed, as Smiley has argued, and if the content of the Charter is morally flawed, as he has also suggested, then there has got to be a moral case for secession. All the more so since the whole constitutional edifice has been transformed into a straitjacket by the rigidities of the amending formula. From the perspective of Quebec, the constitution now takes the shape of an impregnable fortress.

I believe that there exists, at the very least, a plausible case for the secession of Quebec from the Canadian federation. There is no need to go any further than this for the moment.

Guy Laforest is Professor of Political Science at the University of Laval. ❁