"Monahan's Constitution," continued from page 55.

However, if history is any guide, the more authentic answer is that absolutely nothing necessarily follows or happens. Political realities tend to obscure constitutional niceties. Whether it is about resource taxes, language laws, or inter-governmental delegation, "unconstitutionality" is simply one more card to be played in the larger game of political power. Ironically, one of the best studies of this is Monahan's earlier *Politics and the Constitution.*

But the rhetorical effect of "unconstitutionality" ought not to be underestimated. Although Monahan declares its eventuality to be "extremely unlikely," there seems to be the veiled threat that Quebec's resolve to act unconstitutionally (and without the support of international law) might force the federal government's hand and justify, at least, the threat of military intervention.

Indeed, Monahan seems to suggest that constitutional propriety might actually mandate such intervention in order to fulfill the existing constitutional responsibility to the First Nations. The reliance by the federal government on such a duty seems ironic, at best, and downright self-serving, at worst, in the light of its past attitude and actions toward Canada's aboriginal population.

Of course, Monahan is chillingly correct when he concludes that the costs and consequences of Quebec's separation are very high. But he seems to be impervious to the fact that it is commentators, like him, that insist on raising the stakes so high and making the consequences so drastic—strategic sensationalists passing themselves off as hard-headed realists.

The more commentators and experts persist in telling Quebec that it cannot do this or that, the more likely Quebec is to treat such opinion as a partisan challenge to its resolve than a constructive contribution to resolution. Monahan manages to make an olive branch look a lot like a billy club.

The better and more democratic tack is for commentators and experts to use their collective ingenuity and insight to suggest ways in which Quebec and the rest of Canada can separate with a minimum of political disruption and economic upheaval. In this way, Quebec might be more tempted to view such initiatives as a genuine act of good faith and reconsider its determination to secede. Carrots are always better than sticks.

In the contest between legality and democracy, the constitutionally empowered courts know where their allegiance must lie. In the light of a "Oui" vote in any future Quebec referendum, it would be a foolish court of judges that closed its legal ears to such a resounding democratic voice. And there is no historical evidence for that kind of judicial naiveté.

If *prevailing heads would cool*, cool heads might have a chance to prevail. And constitutional pundits might concede that, unlike their meteorological colleagues, their forecasts can and do have an effect (for bad as well as good) on the constitutional climate.

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The Unfinished Agenda of the Charlottetown Accord

by Harry Glasbeek

When the Charlottetown Accord was defeated by the people, the politicians who had hoisted their flags to the passage of the Accord did not seem to be eager to assume that it was their ineptness, their undemocratic arrogance, and their paternalism, which had led to the rejection of their proposals. Rather, they put it down to a sort of country-wide constitutional fatigue, to the fact that the people of Quebec, Canada, and of the First Nations were sick and tired of being presented with abstract concepts couched in hard-to-penetrate legal language. Therefore, said these unrepentant politicians, they would now bend their efforts toward addressing what the people really wanted to have their governments do—that is, deal with concrete economic problems. Under this rubric they set out to implement the unfinished economic agenda of the Charlottetown accord.

Capital already had made great gains at the expense of the state in recent years. From a constitutional perspective, the conclusion of the FTA and the NAFTA and the Uruguay-GATT round meant that the federal government (and through it, the provincial ones) had agreed to give up massive amounts of its right to manage trade and to use its power to create a universal social wage and social net although, in a narrow legalistic way, it remains constitutionally empowered to do so. Cor-

porate Canada, of course, never argues that it stands for the dismantling of state powers. But, when the constitution negotiations are put into motion, dominant business interests are right there to push their agenda. The Charlottetown accord evidences this.

The accord contained a business proposal for a new section 91A that would have established an unelected council of the federation whose role was to be to monitor governments' policies and to ensure "the efficient functioning of the economic union" in which zero inflation was to be a goal. This proposal was so clearly intended to be a usurpation of constitutional powers that it was too crass and had to be taken off the table.

But all over the advanced capitalist world, a wedge has been driven between central banks and government, emphasizing the autonomy of the bank. The intention is to make it very difficult for an elected government to control monetary policies. This makes a nation state far more subject to the whims and caprices of international capital.

The struggle that led to the successful claim of independence by super inflation fighter John Crow (note that his holy grail of zero inflation was part and parcel of the Charlottetown accord proposal) is well known. The independence of the Bank of Canada, that is, the dependence of an elected government, was made manifest when Crow was allowed to put his nominee into the post he had just vacated. The Bank of Canada is fast becoming a useful, if not complete, surrogate for the council of federation.

The Charlottetown accord also contained a provision to expand section 121 of the constitution. Capital had been disappointed that the section had been limited to catching those economic measures that acted as barriers between the provinces; it had not been implemented so as to catch those measures that regulated the marketplace within the provinces. The Charlottetown accord proposed to remedy this "anti-business" approach. This has been done despite the defeat of the Charlottetown accord.

The Internal Trade Agreement, signed by the federal government and provinces in July 1994, provides for much greater integration than the Canadian federation had ever permitted by limiting (1) the provinces' right to engage in discriminatory practices with respect to government procurement, (2) their regulation of professions and trades, and (3) their powers to set product standards. Of course, this is merely a political accord, not a formal constitutional rearrangement. But, it is a fait accompli and has curtailed the powers of the provinces and of the federal entity.

From capital's perspective, the centre of the Charlottetown accord was the creation of an econ*omic* union that would make its apparent offer of regional p*olitical* experimentation and sovereignty an empty one. That this was a goal of the corporate agenda cannot be doubted. The creation of a common market by extension of section 121 of the Constitution and other such mechanisms long has been on the academic agenda of right wing academics, such as Trebilcock, Pritchard, Courchene, and Whalley (1983), and politicians, think-tanks, and commissions, such as the C.D. Howe Institute (1991), and the Canadian Bar Association (1978). Old support is found in the Pépin-Robarts Report (1979), the Liberal party of Quebec's beige paper (1988), a Federal Liberal party proposal (Chrétien, 1980), the MacDonald Commission on Economic Union, and even in the Allaire Report. And now, before this round of negotiations is really under way, further economic integration and effectively weakened popular democracy, intended to be included in the Charlottetown accord by business, has been embedded.

Implications

As the politics of the Quebec referendum are heating up, the state of play is:

1) The conclusion of the FTA and the NAFTA and the Uruguay round of GATT and the functional implementation of much of capital's Charlottetown agenda, added to the Charter of Rights and Freedom's legal and ideological check on state-majoritarian regulatory power, have enhanced the sovereignty of capital. The threat of the capital strike has become increasingly more effective in Canada.
2) The same factors have caused the federal government to cede and lose much of its jurisdiction to regulate standards and to control the economy. Further, its commitment to a reduced role is apparent as it floats ideas such as the devolution of legal and political responsibility for social welfare, education and health to the provinces. There, business will exercise more power, aided by the Internal Trade Agreement.
3) Functionally, if not legally, the provinces' powers have been diminished by the FTA, NAFTA (for example, see the Ontario NDP's cave-in on the public automobile question) and now by the Internal Trade Agreement. Retaining such constitutional powers as they have, or even increasing them, is really beside the point:

Continued, see "Unfinished Agenda" on page 58.

"Unfinished Agenda," continued from page 57.

effective provincial sovereignty is on the wane.

4) Quebec's drive for sovereignty would stand in sharp contrast to all of this were it not that that drive is being led by a Parti québécois government which has declared its solemn intent to buy into the anti-sovereigntist FTA, NAFTA, and GATT developments. It is likely to want to use the Internal Trade Agreement as a framework for trade with the Rest of Canada.
5) A peculiar debate is now under way. It is one in which lawyers and politicians are consumed by the passions of democracy, nationalism, ethnicity, culture, concerns for first nations' aspirations, sovereignty, and so on, while failing to recognize that fundamental changes already have taken place and are going to continue apace. These changes make much of the public debate, if not surreal, at least superstructural. Capital's increased political sovereignty might well have been attained without the help of constitutional politics in Canada and Quebec, but it certainly has been helped in its cause by being able to piggy-back on the constitutional push towards political balkanization and economic integration, lately reflected in the Charlottetown accord.
6) The dominant corporations are very happy with the happenings thus far. They do not want the election of the Parti québécois and the politics of nationalism to spoil the party. This explains some of the Rest of Canada's response to recent Quebec developments. More so than in previous constitutional negotiations, the Rest of Canada's approach is overtly economic. Threats are issued: Québécois will not be allowed, by capital, to play in the only game in town—free trade, unrestricted financial institutions—if they demand too much. Paradoxically, the instability that will result for capital if the Parti québécois wins the referendum and hot-headed politicians elsewhere refuse to let Quebec remain part of the newly entrenched economic unit, is the Parti québécois' strongest card. This is why these ugly threats backed by abstract legal arguments, while useful for a moment, need to be kept in check. This is why when corporate agenda proponents, like the C.D. Howe Institute, put out menacing messages, there is a distancing by the powers that be from them; note how Jean Chrétien, Daniel Johnson, and even Ralph Klein have said that they do not want to adopt the C.D. Howe line at this stage.

Capital stands to win either if the Parti québécois loses its bid or if it wins the referendum, provided that, in the latter case, the government of Quebec immediately subjugates its democratically attained sovereignty to the corporate agenda. The real (and only) danger to capital's poli*tical* and *economic* sovereignty is that the politicians may not be astute enough to see that, when all is said and done, it is better for capital to accept a Quebec sovereignty decision than it is to reject it out of political pique. The rest of us in English Canada and in Quebec stand to win if, somehow, the politics of the constitution can be translated into the politics of the rejection of the corporate agenda. The prospects are not good.

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Living With a Lower Dollar

by Tom Kent

In 1995 we will become accustomed to an exchange rate for the Canadian dollar of around US$0.70, perhaps less. Will we take advantage of it, as we can, to reorient economic and industrial policies, to enhance our production and increase employment? Or will the traders in money, widely supported by pundits and politicians, persuade us that a "weak" dollar is a disaster that necessitates more restriction of the economy through higher interest rates and further cutting of public expenditure?

We owe the sharpness of the issue to the way in which the Bank of Canada stopped inflation. It avoided the dreaded monetisation of debt by, in large part, externalizing it.

Canada's net debt to foreigners—after allowing for Canadian-owned assets outside the country—is now close to $350 billion, compared with $100 billion in 1980. It has escalated particularly rapidly in the 1990s, as we have made our interest payments by borrowing even more.

This is represented, by those who profit from it, as investment in