

have made the link immediately between the meaning of 1982 for Quebec and the famous passages on breach of trust and dissolution of government in Locke's *Two Treatises on Civil Government*. For some reason, which had nothing to do with the proximity of fellows such as David Bercuson and Barry Cooper, the insight came to me when I was teaching Locke in a political theory class at the University of Calgary, one month or so before the Meech Lake accord was signed in 1987. It is there that I figured out conceptually and in the flesh what 1982 was all about.

The government of Quebec takes care of the only majority French-speaking society in the Americas. At the heart of the 1982 package was a lucid and voluntary attempt to reduce

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the legislative powers of the government of Quebec in key matters such as language and education, without the consent of Quebec if necessary. In a federal state, the government of Canada also takes care of the people of Quebec. But in the spirit of Locke, as Allen Buchanan reiterated it recently, it had no business reducing the powers of a member state. 1982 is about breach of trust and dissolution of government. Winning the battle, Canadian nationalism also prepared its own demise. Hence, the comparison with Borodino.

Economically, politically, and symbolically, Canada as a community is much more fragile and vulnerable now than it was 15 years ago. It is one of the Western, developed states that faces with the utmost difficulty the hardships of globalization. The vision of 1982

was that Canada had to make itself into a single nation, whatever the costs this enterprise would entail. The ultimate cost could well prove to be the existence of the federation.

If my perception of our situation is correct, this will not happen exactly as the leaders of the secessionist movement in Quebec are anticipating. The breakup of Canada, if it occurs, will not happen following the logical scenario established by the likes of Jacques Parizeau: strong showing by the Bloc Québécois in the upcoming federal election, PQ victory in the Quebec elections, affirmative vote in a referendum on sovereignty, negotiations with Canada, second referendum to ratify the whole matter. This optimistic scenario presumes that no outside pressure would be applied on Quebec public opinion and that Canada would not try to reclaim in a sense its moral superiority by coming to the rescue of the Cree in the North following their own unilateral declaration of independence from Quebec.

Since Robert Bourassa has lost the glorious opportunity that he had either to initiate the secession or radically restructure the federation, the more likely scenario, if my comparison still holds, follows the lines of a slow but steady degeneration of a political system unable to untangle itself from the stultifying vision of 1982. Before the end of this century, the constitutional world of 1867-1982 will be no more.

If I am wrong, I promise to buy a round for all my colleagues who will have preciously treasured this issue of *Canada Watch* and who bring it to the constitutional conference in Australia scheduled for the year 2001.

Guy Laforest is Associate Professor of Political Science/Département de science politique, Université Laval. Quebec Report is a regular feature of Canada Watch.

LEGAL REPORT

PARTICIPATION AND DEMOCRATIC PROCESS

Do third-party spending limits protect or threaten democratic values?

by Jamie Cameron

Following a debate that lasted a mere 15 minutes, the federal Parliament enacted Bill C-114 on April 3, 1993. Under the legislation, third parties, including organizations, individuals, and interest groups, are prohibited from spending in excess of \$1,000 to support or oppose any candidate or political party during a federal election. In anticipation of the upcoming federal election, the National Citizens' Coalition challenged that provision under section 2(b) of the *Charter of Rights and Freedoms*, which guarantees freedom of expression. On June 25, Mr. Justice MacLeod of the Alberta Queen's Bench invalidated Bill C-114's spending and blackout provisions.

Responding to the decision, Professors Bercuson and Cooper, who testified in support of the restriction, argue that by ensuring a "level playing field for the only organizations capable of forming a government, namely political parties," such legislation would have made Canadian elections "more democratic." Bill C-114 was designed to ensure that "Canada does not follow the path of the United States." There, the prevalence of PACs (political action committees) and virtually unlimited cam-

paign spending support perceptions that money buys elections for politicians, whose votes as elected officials are bought, during elections and in office, by special interest groups.

Bill C-114's predecessor, which absolutely prohibited third-party advertising, was invalidated during Canada's 1984 federal election. Four years later the Conservative party won a federal election fought largely on the issue of the Canada-U.S. free trade agreement. It is widely believed that money, especially through the infusion of corporate advertising in support of the FTA, influenced the outcome.

Subsequently, a royal commission on electoral reform was established and mandated to make recommendations on a variety of electoral issues. The Lortie commission report, issued in 1991, found that third-party advertisements on issues such as free trade could be grossly unfair to the candidates. To promote a vision of democratic participation based on "equal opportunity to exercise meaningful influence over the outcome of elections," the Commission recommended that third parties be prohibited from spending more than \$1,000 during federal elections.

That recommendation was ignored, however, when the federal government enacted Bill C-81, which regulated the national referendum. There,

the Conservatives rejected the argument that spending limits were necessary to ensure a fair and equitable debate of the issues.

Large sums of money were rallied and spent in favour of the referendum question by the national "Yes" Committee, a tripartite organization headed up by the Conservative, Liberal, and New Democratic parties. When the referendum question was defeated in a majority of provinces, it became apparent

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that money had not bought the referendum, and may even have been counterproductive.

The campaign also demonstrated that, as citizens became empowered, politicians lost control of the debate. As the voices of interest groups, individuals, and ad hoc citizens' committees were heard, Canada wit-

nessed an unprecedented exercise in democratic participation.

Only a few months later, the Conservatives, Liberals, and New Democrats agreed to Bill C-114's spending limits, which effectively channeled election debate through the registered parties and their candidates. To determine whether democratic values are protected or threatened by such measures, it is necessary to consider whether there are relevant differences between parliamentary elections and referenda.

Although the integrity of parliamentary office is not at stake in a referendum, voices can dominate or be drowned out just as easily there as in an election for office. If a level playing field is the objective of spending limits, such measures should stand or fall together in elections and referenda.

Moreover, before assuming that the perceived corruption of American politics is inevitable in Canada, differences between parliamentary democracy and republican government should be taken into account. In the United States, because party discipline is weakened by the separation of the presidential and congressional branches of government, members of Congress may be more susceptible, in casting their votes, to influence by lobbyists and interest group organizations. In Canada, party discipline determines how

Canada Watch

Practical and Authoritative
Analysis of Key National
Issues

Volume 2, Number 1
July/August 1993

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Production
WordsWorth Communications

Canada Watch is produced jointly
by the York University Centre for
Public Law and Public Policy and
the Robarts Centre for Canadian
Studies of York University and
published by Emond Montgomery
Publications Limited
58 Shaftesbury Avenue
Toronto, Ontario M4T 1A3
Phone (416) 975-3925
Fax (416) 975-3924

Subscription Information
Canada Watch is published eight
times per year. Institutional
subscriptions cost \$165.00 plus
GST and include an annual
cumulative index. Individual
subscriptions are entitled to a 40%
discount. Please contact Terry
Hamilton at Emond Montgomery
Publications for more information
or a subscription.

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Printed in Canada

members of Parliament will vote in most cases. And, as Prime Minister Turner discovered in 1984, where the party has practised patronage, the public will hold it accountable.

In principle, what is at stake is a conception of democratic participation. How can citizen participation be viewed as undemocratic, and are democratic values better served by legislation that effectively enables the parties and their candidates to control election debate? Alternatively, would those values be promoted by permitting citizens and groups outside the party structure to comment, independently and without inhibition, on the issues, the candidates, and their policies?

To answer those questions, remember the open debate of the referendum campaign and be reminded that Mr. Justice MacLeod invalidated Bill C-114's spending limits, in part, because the government failed to demonstrate that third-party advertising does influence election results.

Jamie Cameron is an Associate Professor and Assistant Dean at Osgoode Hall Law School, York University. Legal Report is a regular feature of Canada Watch.

ECONOMIC REPORT

FEDERAL-PROVINCIAL FISCAL NEGOTIATIONS WILL DEFINE THE PUBLIC AGENDA WELL INTO THE NEXT CENTURY

by Fred Lazar

Shortly after the fall election, the new prime minister will sit down with her or his provincial counterparts for the first of many meetings to work out a cooperative framework for tackling the deficit problem and, more important, to negotiate a new set of federal and provincial agreements on the allocation of spending and taxing powers. Indeed, this and the many follow-up meetings will become *de facto* the next round of constitutional negotiations. However, unlike the preceding two rounds that produced the Meech Lake and Charlottetown accords, the negotiations of fiscal responsibilities are more likely to succeed. There will be much at stake for all the participants. Money will be on the table and this should facilitate compromises. Ratification of the agreements will not require a complex procedure.

The federal-provincial first ministers' and finance ministers' meetings, which will commence in earnest in the fall, will be driven by four events: large deficits at the federal and provincial levels, the continuing high rates of unemployment, the expiration of the established programs funding and equalization agreements, and the failure of the Charlottetown accord. Although the

primary focus of the negotiations will be the deficits, the allocation of fiscal responsibilities and the reduction of duplication in government activities should share centre stage. The negotiations should set the framework for governing Canada as well as the social and economic agendas well into the next century.

DEFICITS, REVENUES AND SPENDING OF THE THREE LEVELS OF GOVERNMENT

A look at the Statistics Canada data for the government sector will highlight some of the issues and problems that the federal-provincial meetings will have to address. The aggregate net borrowing requirements of all levels of government in Canada more than doubled, from \$19.7 billion in 1989 to \$43.9 billion in 1992. Net borrowing requirements (a good measure of the financial market impact of government deficits) have increased further thus far into 1993.

Much of the deterioration of the fiscal position of governments has occurred at the provincial level where net borrowing has risen from \$1.5 billion in 1989 to \$22.8 billion in 1992. The increase in the net borrowing requirements of the federal government has been more moderate during this period — from \$21.2 billion to \$25.7 billion. Obviously, the provincial governments have good reason for being concerned with deficits.

An examination of the data for 1992 begins to reveal why a new fiscal arrangement should share centre stage during the negotiations and why the role, responsibilities, and fiscal capacities of local levels of government will also have to be given a high priority. Excluding investment income, the federal government received about 50 percent of all government tax revenues in 1992. Provincial governments received 38.8 percent of the total revenues and local governments received 11.2 percent, primarily from property taxes. On the other hand, in