

including women. We have more women chiefs on a percentage basis than there are women in parliament. To suggest that somehow we cannot speak or consider the interests of women is (as you can tell from my blood pressure rising here) profoundly insulting. ...

I want to say a word about the fact that the package as a whole is a package of compromise. It is not a package for people who are dogmatic. But it is a package that is of fundamental importance for Aboriginal people. For those of you who may be undecided, I am hoping to persuade you to vote "yes" if for no other reason than the Aboriginal package and I will tell you why. The

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dynamics, in my view, that led to the conclusion of the Aboriginal package are dynamics that will never be repeated. There was a spirit of generosity that was present because people were anxious to get a deal and anxious to get a unanimous package. We were lucky to be able to participate in a spirit of generosity to facilitate this process. We were not there in a power grab. We participated because we believe in a unified Canada, and we believe in accommodating difference in a unified Canada.

We will never repeat the process again. I know one should "never say never," but I feel very strongly that we won't and that a "no" vote any-

where is the end of the process. I have grave worries about a "no" vote in the province of Quebec and I have worries because of our own people. We have said to our people (and the former national Chief of the Assembly of First Nations, Georges Erasmus, has said this publicly on many occasions), "give us one more chance." Let us go out and try to persuade Canadians and find a way to build bridges, a way to develop a constructive relationship. There are movements, very strong and very real in our communities, that are not interested in peaceful solutions. Suppose we have to turn around on October 27 and suggest to those people that we failed, or that perhaps we would like to have another chance in five years to do it again. Excuse me very much, Preston Manning, but that's not much of a solution or an answer. For some of us, like myself, who are ideologically very committed to peaceful solutions, to dialogue, openness, working together, compromise, building alliances, and to lifting each other up, the idea and the prospects of a "no" vote are particularly devastating. I worry very much about a "no" vote in Quebec. Not because of the fact that it brings the process to a halt, but because of the future relationship between the First Nations and Quebec, which I think will reach a low that is below the point reached in 1990. I think you have to turn your mind to the consequences.

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IS THE REFERENDUM DEMOCRATIC?

by Reg Whitaker

On October 26, Canadians for the first time in their history vote nationally on constitutional changes.

It has often been remarked that the strictly elitist nature of the BNA Act in 1867 undermined the popular legitimacy of Confederation. The 1981-82 patriation failed in the end to include any provision for amendment by popular referendum, and the image of Meech Lake as a deal done behind closed doors by 11 white males was an important cause of its popular rejection.

Is October 26 a clear advance for democratic accountability, regardless of the outcome? Having a referendum at all is obviously more "democratic" than following past precedent, but October 26 is also a distortion of democracy.

PROBLEMS

First, the question. It demands an all-or-nothing answer, "yes" or "no." But the package is an extremely complicated set of compromises for which there is no comprehensive legal text. Even a full legal text would, of course, be largely unintelligible to most ordinary citizens without law or political science degrees.

The real problem is that citizens will have to make up their minds on the basis of trust: which set of advocates does one believe, or which does one mistrust? Given the current legitimacy crisis of politicians and other established elites, this is hardly a reassuring scenario.

October 26 means "yes" to a bundle of complicated changes, the overall effect of which remains very unclear—or a "no" to what? A "no" in Quebec would obviously mean something altogether different from an English Canadian "no," but the

latter could mean many things: a feminist "no"? A Reform "no"? An anti-Quebec "no"? A western Canadian "no"? A strong central government "no"? An ethnic "no"? What kind of Canada would a "no" indicate? It's anybody's guess.

There is the question of money. Although the Quebec vote will be strictly controlled according to that province's admirable referendum law, anyone can spend as much as they please in the rest of the country. Presumably, this means that the Yes side (with government and business money) can drown out the No side in TV ads. Another avalanche like the pro-free trade blitz of 1988 will scarcely contribute to genuine democratic debate.

There is the question of the "advisory" nature of the vote. No rules have been established as to what would constitute a valid "yes." The crucial problem of national versus concurrent provincial majorities has been left deliberately unresolved. A Quebec "no" is clear in its implications. But what happens if, say, British Columbia votes "no" while the rest of Canada votes "yes"? Is the opinion of British Columbians simply overridden? Or does one province veto the entire package?

In short, October 26 is a very crude instrument. When a crude instrument is employed, results can be unpredictable, and collateral damage is likely.

PROCESS

The deepest reason why *this* referendum is not very democratic can be found in the wider process in which it is embedded. Constitutional reform has two phases: the process of developing proposals, and the process of ratifying a consensus. The first phase this time around was more democratic than Meech Lake, but mainly in image. Beginning with the Spicer Commission, there has been much emphasis on "public consultation."

This is really a form of opinion management in which governments attempt to engineer consent. It is no surprise to find the federal government going to the courts to prevent the release under access to information of its polls on national unity, viewed by Ottawa as a negotiating tool.

Of course, governments do not always succeed in manufacturing consent; the techniques are imperfect and the public are not always malleable. The process from Spicer through Beaudoin-Dobbie was in many ways a public relations disaster. The final reversion to closed-door meetings of the first ministers, although obviously necessary, further undermined the carefully nurtured image of an open process. Seeking the public's "advice" in a referendum at the second or ratification phase does little to atone for the undemocratic sins of the first phase — indeed, the first phase may have poisoned the second.

LOST OPPORTUNITIES

An alternative method for the first stage would have been a constituent assembly, a course rejected by Ottawa. This would hardly have constituted direct democracy (impractical in designing a constitution, in any event), but it could have widened the participation of elites, thus enhancing the *representative* nature of the process.

Ottawa's rejection of such a body is now being counted in the cost of significant organized opposition to a "yes" vote. The hostility of NAC and feminists across the country is a direct result of the narrow range of participants in the first phase. The argument of the politicians that constitution making requires compromise falls on the deaf ears of those excluded from the bargaining table. Women were not at the table to make concessions and, thus, do not feel bound by what many see as all give and no take. Aboriginal leaders, on the other hand,

were at the table, were part of the give and take, and now feel obligated to support the result.

To make matters worse, the first phase did allow some glimmerings of what a constituent assembly might have accomplished. The Beaudoin-Dobbie conferences did allow for debate among a wider cross-section of people — and some hint of the creative compromises that could emerge from a more genuine democratic exchange. Among these was the momentary affirmation of asymmetrical federalism at the Halifax meeting. This idea offered a real compromise between the Quebec and English Canadian societies: let Quebec have "special status" while retaining a strong national government for English Canada.

Halifax was, alas, only a fleeting dream. Back in the real world, the premiers insisted on treating the process as a negotiation between governments. The one-sided and self-serving construct of the "equality of the provinces," combined with the usual power grabbing of premiers, resulted in a decentralization for which there is little public enthusiasm in English Canada — and a symmetrical federalism for which there is little enthusiasm in Quebec.

If many of those who were excluded had been brought outside during the first phase through a constituent assembly, there might today be wider support for ratification, and there might be a more genuine compromise between people and societies rather than between governments alone. As it is, ratification by referendum is a deformed democratic instrument.

A "yes" vote will buy time, a "no" vote will buy chaos, but neither will enhance the "sovereignty of the people."

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