



CANADA WATCH

Practical Analysis of Constitutional and Other Key National Issues

ACCORD'S CONTRADICTIONS MAY PRODUCE BACKLASH

by *Kenneth McRoberts*

Public criticism of the new constitutional agreement seems paradoxical. The complaints of English Canadians, especially in western Canada, that the agreement sacrifices their aspirations to Quebec's interests are matched if not exceeded by the cries of Quebec nationalists that it is an essentially English-Canadian document that totally ignores Quebec's longstanding aspirations. As it happens, both sides are right. Throughout the constitutional debate of the last few years English Canada and Quebec have pursued fundamentally different agendas. Rather than directly accommodating each of these agendas the agreement ultimately serves to frustrate each of them.

DIFFERENT AGENDAS IN ENGLISH CANADA AND QUEBEC

In English Canada, the predominant focus has been upon Canada's national institutions. There has been concern with preserving the powers of the federal government and strengthening the *Charter of Rights and Freedoms*. But the greatest attention has been upon schemes to make the federal government more responsive to the interests of "Outer Canada" (western and Atlantic Canada), especially through reform of the Senate along "Triple E" lines.

In Quebec, for decades now the primary concern has been to expand

the powers of the Quebec government so that it can be more effective as the "national" institution of Quebec. This objective has been central not just to the *souverainiste* ambitions of the Parti québécois but to most schemes for a "renewed federalism." The most dramatic case is, of course, the Allaire Report, which the Liberal Party adopted as official policy in March of last year. Under this document only five jurisdictions would remain exclusively federal; its proposal for the Senate is no less than abolition. When the joint parliamentary committee on constitutional reform (Beaudoin-Dobie) presented its report Robert Bourassa felt obliged to denounce its failure to transfer sufficient power to the provinces and to decry its adherence to "un fédéralisme dominateur."

On this basis, one might well have imagined that the constitutional negotiations would produce a trade-off that responded directly to each agenda: a reformed Senate based on equal provincial representation coupled with a devolution of powers to Quebec. With new provincial powers Quebec might have had to accept a diminished role for its M.P.s (and perhaps its senators) when it came to votes on federal measures that would not apply in Quebec but that would have been acceptable. On this basis, "asymmetry" might well have been made less objectionable out-

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side Quebec since, under these conditions, Outer Canada would have dominated the national parliament.

REJECTING EACH OTHER'S AGENDA

However, this was not a normal bargaining process. First, one of the parties, Quebec, was not even present at the table until close to the end, resulting in confusion over what in fact Quebec wanted. When Bourassa finally joined the negotiations, the terms of the deal had already been set; it was too late to advance effectively Quebec's position. All Bourassa could hope to do was to limit the damage.

More fundamentally, neither side was in the mood for such a trade-off since each fundamentally rejected the other's project. For Quebec, a "Triple E" Senate entrenched a principle — equality of the provinces — which directly denied Quebec's claims for a distinct status. Within this same principle of provincial equality English Canada had difficulty accepting devolution of powers to Quebec. Nor were many English Canadians prepared to accept a general devolution of powers to all provinces, given their commitment to a strong federal government. The result, then, was not an accommodation of each other's agenda but a mutual frustration of them.

LIMITS TO THE REFORMS

Thanks largely to Quebec's resistance, Outer Canada gets a reformed Senate which has little real power. What had been acceptable to Ontario on July 7 clearly was not acceptable to Quebec, once it became an active party in the negotiations. If that were not enough, central Canadian dominance of the federal government is enhanced through additional seats in the House of Commons.

Thanks to English-Canadian resistance, the Quebec government

gets little by way of additional powers. To placate English-Canadian concerns, the "distinct society" clause of the Meech Lake Accord has been circumscribed and now appears in a "Canada clause" where it stands as one of several references to values and features of Canadian

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society. Although the agreement does explicitly assert provincial jurisdiction in a few areas, unlike the Meech Lake Accord, this amounts to an affirmation of existing provincial jurisdiction.

To be sure, it can be argued that Quebec has gained in terms of its influence within institutions in Ottawa. Quebec's representation in the House of Commons has been increased and there is the guarantee it will not fall below 25 percent. Quebec government-appointed Francophone Senators will, in concert with Francophone Senators from other provinces, exercise a veto over laws affecting the French language and culture. Yet, this was not at the heart of Quebec's agenda.

Thus, it is indeed possible for both Quebec and Outer Canada to claim that they have been "humiliated." In terms of their original agendas, each of them has been.

THE ROAD AHEAD

As a consequence, ratification of the accord is not a certainty, especially in Quebec where the presence of well-organized opposition forces promises a vigorous pre-referendum debate.

By the same token, if the accord should be adopted some of its meas-

ures may end up working against "national unity" — once it becomes fully apparent just how limited they are. One can imagine the outcry in Western Canada when, for the first time, the new Senate exercises its new role of protecting Outer Canada's interests only to be massively outvoted in a joint sitting by the House of Commons, more than five times larger and dominated by central Canadian interests. By the same token, what will be the reaction in Quebec when it becomes clear that Quebec's newly affirmed "exclusive jurisdiction" over cultural matters within the province has no impact whatsoever on the activities in Quebec of the federal government's cultural institutions? For that matter, what would be the reaction in Quebec if, as some Quebec observers claim, the reference in the "Canada clause" to the "vitality and development" of Quebec's Anglophone community should, despite the "distinct society" clause, lead to court restrictions on Bill 101?

In short, the accord may prove sufficient to ease Canada out of its present constitutional crisis, favoured by both a massive government selling campaign and extreme popular fatigue with the whole constitutional question. But one can only wonder what might have happened if English Canada and Quebec had squarely faced each other's agenda and worked out an arrangement that genuinely accommodated their separate objectives.

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