

SPECIAL REPORT QUEBEC ON THE EVE—CANADA ON THE EDGE



CANADA WATCH

Practical and Authoritative Analysis of Key National Issues

A YORK UNIVERSITY publication of the CENTRE FOR PUBLIC LAW AND PUBLIC POLICY
and the ROBERTS CENTRE FOR CANADIAN STUDIES.

TALKING AT LAST?

by *Kenneth McRoberts*

For over 30 years now, English Canada and Quebec have been conducting "a debate of the deaf." Time and again, one side has advanced a position, or pursued a policy, only to be both baffled and dismayed by the apparent response of the other.

During the early 1970s, leading English-Canadians embraced the ideal of a bilingual Canada; Quebec responded with Bill 22 and Bill 101. In the late 1970s, Quebec nationalists elaborated a scheme for sover-

eignty association; English Canada rejected it out of hand as a non-starter, unworthy of serious discussion. In 1982, English-Canadians embraced constitutional repatriation and a *Charter of Rights and Freedoms*, believing it discharged a promise made to Quebec during the 1980 referendum; in Quebec, leading federalists joined nationalists in denouncing it as a violation of Quebec's rights and interests. English Canada and Quebec did come to a

common position on the Charlottetown accord: each claimed that through the accord it had been humiliated by the other!

AT LAST, DEBATING THE SAME THING

Nonetheless, over the last few months, something quite remarkable occurred: English Canada and French Quebec were actually debating the same topic. To be sure, the topic was Quebec sovereignty—as if the only theme English Canadians and Quebec francophones can

*Continued, see "Talking At Last?"
on page 62.*

A SOFT NATIONALIST PERSPECTIVE

by *Christian Dufour*

A few months before the referendum on sovereignty takes place in Quebec, most observers are predicting a "no" vote. The sovereigntists are considering whether to change the question in a bid to win the referendum or to postpone the referendum.

At this point, the "no" voters regard the idea of changing the question as an unacceptable manipulation of democracy. It appears to be a last minute alteration of the rules of the game by those who feel they are losing.

There is nothing surprising about the reaction of the "no" voters who do not want to risk losing the referendum. Most of them will also oppose the eventual deferment or cancellation of the referendum.

For many Quebecers, deferring the referendum would only add to the present insecurity. In the context of globalization, Canada, including Quebec, would be terribly affected by international money markets, which dislike uncertainty. Federalists and sovereigntists at least agree on one point: it is time to decide and to ask the clearest question possible

in order to end the crisis of the last 35 years. The country cannot afford such a high level of insecurity while there are so many unresolved economic and social problems.

For those who favour a "no" vote, the defeat of the referendum would mean the death of Quebec nationalism that systematically refuses to cooperate with the rest of Canada.

Why should I worry about a "no" vote since I am not a sovereigntist?

After the signing of the Meech Lake accord, I, for the first time, felt emotionally Canadian. I was convinced that the adoption of the Meech Lake accord would positively

*Continued, see "A Soft Nationalist
Perspective" on page 64.*

"Talking At Last?"
continued from page 61.

effectively address together is the termination of their relationship. But at least they were talking about the same thing.

In the past, with some significant exceptions, English-Canadian observers had not been prepared to subject Quebec sovereignty to sustained analysis. Most had been content simply to evoke the horrors of the economic catastrophe that Quebec would surely suffer.

In recent months, even the fiercest antagonists of sovereignty have felt obliged to elaborate detailed arguments about the consequences of a "yes" vote. For instance, in order to prove that Quebec can secede on only the most horrendous of terms, Patrick Monahan carefully outlined a series of political and legal obstacles to a negotiated settlement. In doing so, he may have been stacking the deck—maximizing the number of hurdles and setting each barrier at the highest possible level. And he may have underestimated the pressures that would exist for a negotiated settlement precisely because the consequences of failure could be so horrendous. But he did subject the sovereignty option to a detailed analysis, drawing upon the available scholarly literature to do so.

Even more striking is the readiness of some to consider seriously the possibility that Quebec sovereignty might be secured on less than catastrophic terms and to try to identify the conditions that would make this possible. In particular, a 400-page study by Robert Young draws upon a wealth of materials, both Canadian and comparative, to do precisely that.

Just a few years ago, such a debate among leading English-Canadian intellectuals over the consequences of Quebec sovereignty

**VOLUME 3,
NUMBERS 5 & 6
MARCH/APRIL 1995**

Single Copy \$5.00

ARTICLES

Talking At Last?
by Kenneth McRoberts 61

A Soft Nationalist Perspective
by Christian Dufour 61

The Lessons of Meech Lake and
Charlottetown
by Richard Simeon 65

Lucky and Smart? The Federal
Liberals' Referendum Strategy
by Reg Whitaker 69

Whatever Happened to Political
Debate:
Or, Honey I Shrunk the Space!
by Shelagh Day 70

The Quebec Referendum:
The Long View—Part Two
by Alan Cairns 72

EDITORIAL

Negotiating With a Sovereign
Quebec:
Four Scenarios
by Daniel Drache 74

ARTICLES

The United States and an
Independent Quebec
by Stephen Clarkson 76

The Status Quo: Workable,
But Intolerable?
by Peter M. Leslie 78

Assessing the Outcomes of the
Current Constitutional Rounds
by Peter H. Russell 81

Some Consequences
of a "No" Vote
by Alain Noël 84

The Referendum Debate and the
Aboriginal Question in Quebec
by Daniel Salée 85

Quebec Versus Aboriginal
Rights to Self-Determination
by Reg Whitaker 87

Where Are the Ethnic
Communities in the Debate?
by Marie McAndrew 89

Did the Quebec Government's
Strategy Fail During the
Pre-Referendum Campaign?
by Guy Lachapelle 91

Referendum '95: The Media's
Special Role and Responsibility
by Michel Vastel 93

Gunboat Diplomacy and
the Rule of Law
by Jean-Gabriel Castel 94

would have been unthinkable. A variety of factors might explain this change. In part, the sovereignty option has presented itself with a new urgency. Sovereignty could not be as readily dismissed, once the Parti québécois was no longer linking it to a comprehensive economic association. Beyond that, the Parizeau government's apparent determination to secure sovereignty, through unilateral declaration if necessary, gave the proposal a new urgency. Finally, three decades of continued

frustration with Quebec clearly have taken their toll in English Canada. The last few years saw the rise of something unprecedented: English Canadians actually making a sustained argument that Quebec secession should be welcomed rather than feared.

**PROJET DE SOCIÉTÉ:
THE NEED TO JUSTIFY**

Yet, if English Canada and Quebec were finally addressing the same theme, it soon became apparent that

they were doing so in quite different terms. Whereas for English Canada the debate over the political and economic consequences of Quebec sovereignty was a new debate, for Quebec it is very much an old one. Thus, Quebec's regional consultations soon revealed that attention had shifted from the "what" and "how" of sovereignty to a more difficult question: the "why" of sovereignty. In particular, nationalists called for a projet de société that would describe the type of Quebec society sovereignty would create.

What had seemed self-evident in the past was no longer so. In the late 1970s, compelling reasons for sovereignty could be found in the need to reinforce the status of French in Quebec and to unleash the potential of the Quebec state to develop Quebec's economy and to implement a distinctively social democratic agenda. After 18 years of Bill 101, and with the current neo-liberal onslaught on the state, such arguments have lost much of their credibility.

It is becoming increasingly evident that the option that some Eng-

lish-Canadian academics and intellectuals have been so earnestly assessing over the past few months is rejected by the majority of Québécois. Nor is this apparent rejection of sovereignty the result of English Canada's recent contribution to the debate. Within Quebec the lines were already drawn well before it began. In effect, a feature of the sovereignty proposition that compelled this new debate in English Canada, its clarity, was precisely its downfall in Quebec. Defined as it is currently by the Parizeau government, sovereignty entails an abrupt break with Canadian political institutions while providing little assurance about the economic circumstances of a sovereign Quebec.

Not too long ago, the general mood in Quebec favoured clarity. With the collapse of Meech, francophone Quebec had felt totally rejected: English Canada had found unacceptable even the minimalist of terms for accommodating Quebec. Only sovereignty could provide the equally uncategorical response that Quebec's national humiliation re-

quired. By 1995, as passions have cooled, so has the need for sovereignty.

As a result, debate in Quebec seems to be shifting away from a rigid definition of sovereignty and back to options that the rest of Canada has always dismissed. At its recent conference, Lucien Bouchard secured the commitment of the Bloc québécois not only to explore the potential terms of an economic association between a sovereign Quebec and Canada, but also to imagine how the two might be linked by common political institutions, including a parliament. In effect, Quebec may once again be seeking to engage English Canada in a debate over sovereignty association—a debate that English Canada will be quite disposed to reject out of hand.

DEBATING THE RENEWAL OF CANADA RATHER THAN ITS TERMINATION

There are moments in the past when English Canada and French

Continued, see "Talking At Last?" on page 64.

Canada Watch

Practical and Authoritative
Analysis of Key National Issues

Volume 3, Number 4
January/February 1995

Editors-in-Chief

Jamie Cameron
Centre for Public Law and
Public Policy

Daniel Drache
Robarts Centre for
Canadian Studies

Columnists This Issue

Alan Cairns
University of British Columbia

Jean-Gabriel Castel
York University

Stephen Clarkson
University of Toronto

Shelagh Day
National Action Committee on
the Status of Women

Daniel Drache
York University

Christian Dufour
École national
d'administration publique

Guy Lachapelle
Concordia University

Peter M. Leslie
Queen's University

Marie McAndrew
Université de Montréal

Kenneth McRoberts
York University

Alain Noël
Université de Montréal

Peter H. Russell
University of Toronto

Daniel Salée
Concordia University

Richard Simeon
University of Toronto

Reg Whitaker
York University

Michel Vastel
Journalist

Production

WordsWorth Communications

Canada Watch is produced
jointly by the York University
Centre for Public Law and Public
Policy: Phone (416) 736-5515,
Fax (416) 736-5546 and the
Robarts Centre for Canadian
Studies of York University:
Phone (416) 736-5499,
Fax (416) 736-5739.

ISSN 1191-7733

Subscription Information

Canada Watch is published
eight times per year.
Subscription rates effective
this issue are as follows:

Institutions	\$75.00
Individuals	\$35.00
Students	\$20.00

(Outside Canada add \$10.00)

© Copyright 1995 Centre for
Public Law and Public Policy;
the Robarts Centre for
Canadian Studies

Printed in Canada

"Talking At Last?"
continued from page 63.

Quebec came close to engaging each other on the terms of re-creating their relationship rather than ending it. In the late 1970s, the threat of sovereignty had, in fact, impelled federalist thinkers to develop a formula for a "renewed federalism." In particular, the P  pin-Robarts Task Force on National Unity, commissioned by the federal government and which brought together leading federalists from both English Canada and French Quebec, offered the prospect of an asymmetrical federalism. The Quebec Liberal party's beige paper offered important measures for accommodating Quebec within federalism. However, Pierre Trudeau undercut this historic opportu-

nity by ignoring the P  pin-Robarts report and (we now know) by securing Claude Ryan's commitment to put the beige paper on the back burner. Ten years later, the Meech Lake accord offered a similar prospect of rapprochement, but was undone by the combined effect of Trudeau's personal intervention and the weight of the constitutional changes that he had secured in 1982.

In its dismissal of such notions as asymmetrical federalism, the Trudeau vision of Canada offered "clarity." But this clarity was as inappropriate to the Canadian polity as is the clarity of the Parizeau conception of Quebec sovereignty. In a sense, the Trudeau and separatist visions are mirror images of each other. The former denies Quebec's specificity

whereas the latter takes it to the ultimate step. Indeed, both are rooted in Quebec of the 1960s, which spawned the separatist movement and launched Trudeau on his crusade to combat Quebec nationalism by implanting his alternative visions of Quebec and of Canada.

Now, in the mid-1990s, could we hope to engage in a redefinition of Canada on a new basis, whether it be asymmetrical federalism, confederalism, or some other formula? Or are we bound to continue the dialogue de sourds that we know so well?

Kenneth McRoberts is a Professor of Political Science at York University.



"A Soft Nationalist Perspective,"
continued from page 61.

change the future of this country. Even today, I cannot help asking English Canadians whether or not they were in favour of such an agreement. Even though most of my friends have become sovereigntists, I remained opposed to the Charlottetown agreement, which would have worsened an already difficult situation. I may well belong to the "soft nationalists" whom the PQ referred to in a recent document. I am first faithful to Quebec, but also attached to Canada.

Despite its sometimes annoying dogmatism, sovereignty is still at the heart of Quebec nationalism. I would go so far as to argue that a strong sovereign movement in Quebec is good for Quebec as well as for Canada.

If the referendum on sovereignty actually takes place as announced by the PQ government, I may very well vote "yes" even though I am

not a sovereigntist. I will vote "yes" because I am convinced that a "no" vote would be the worst scenario possible for Quebec and Canada. I will also vote "yes" because I cannot believe in a total separation of Quebec from Canada.

The "purs et durs" sovereigntists may regard me as a colonized individual; the federalists may find me naive. However, the attachment of the Quebecers to Canada is too deep to justify a complete break. It is unclear to me how a "yes" vote could lead to the type of independence of which some Quebecers dream.

This being said, a "yes" vote is becoming less and less of an eventuality. Quebecers are unlikely to favour the sovereigntist project that is now being presented to them. There is evidence that this attitude is not going to change in the coming months.

One frequently argues that Quebec would be dangerously affected by a "no" vote at the next referen-

dum because it would be the second "no" vote in 15 years. It would be then preferable for Quebec and Canada to postpone the referendum rather than get a "no" vote.

In a meeting organized by Cit   Libre, St  phane Dion, who defends the status quo, claimed that Quebec nationalism has been essentially modern, open, and positive since its beginning. St  phane Dion does not seem to realize, though, that another "no" vote would transform Quebec nationalism into a negative and frustrated movement inside Canada. What a contrast it would be with the essentially constructive role that the Bloc qu  b  cois and its leader have so far played in Ottawa.

A "no" vote would dramatically accelerate the disintegration of this country, which started 30 years ago with the Quiet Revolution and the unwillingness of Canada's elites to recognize Quebec nationalism. On the other hand, if the percentage of the "yes" votes were greater than that of the 1980 referendum, the

political system of Canada would feel threatened and try to make Quebec more dependent on Canada. This happened in 1982 when the *Charter of Rights and Freedoms* was passed.

A "no" vote would forever destroy every chance for Quebec to separate and Canada would pay a terrible price. Quebec nationalism

would turn inward on itself and fester. Canada would suffer the negative consequences.

Deferring the referendum is likely to generate an equally negative reaction on the part of the federalists who want to get rid of Quebec nationalism. We will then have to rely on those English Canadians who are

Quebec's friends and who fought for the ratification of the Meech Lake accord. This is not much to hope for, but there is not much else.

Christian Dufour is a Professor at the École nationale d'administration publique in Montréal. This article has been translated from French by Marilyn Lambert.



THE LESSONS OF MEECH LAKE AND CHARLOTTETOWN

by Richard Simeon

Meech Lake was an attempt at a focused, limited, reform aimed primarily at meeting Quebec's five demands for signing on to the 1982 *Constitution Act*. In substance, it was defeated because it failed to address the much broader set of constitutional agendas that had emerged since 1982. In its process, Meech represented the failure of the strictly intergovernmental constitutional review process to respond to the changed political dynamics generated by increased demands for citizen participation generally and by the 1982 requirement of legislative ratification for constitutional amendments.

Charlottetown was a response to these objections. Rather than being limited and exclusive, it sought to be inclusive, embracing a vast range of changes. And, unlike Meech, the process embodied a far greater range of consultation and debate in the early stages, an expanded table in the intergovernmental negotiations, and, of course, popular judgment in the referendum of October 1992. If Meech demonstrated the failings of a closed process and a narrow agenda, Charlottetown demonstrated the difficulties associated with an expanded agenda and a more democratic process.

The political circumstances surrounding the Meech debate between 1987 and 1990 and the Charlottetown process in 1991-92 are in many ways different from the circumstances we face in 1995. The fiscal crisis weighs far more heavily over the whole process than it did before. In Quebec, the PQ holds power. In Ottawa, the majority Liberal government maintains a level of trust and confidence far higher than that of the previous Mulroney government. On the other hand, with the Bloc forming the official opposition and the Reform party constituting the alternative government for English Canada, Ottawa enters this debate without the broad cross-party agreement on constitutional issues and the unity question that has characterized previous governments. This will make it harder for the Liberals to speak unequivocally for Canada during and especially after the referendum campaign.

Perhaps the most general lesson of Meech and Charlottetown was to underline and reinforce the mutual incomprehension between Quebec and the rest of Canada (ROC). As Richard Johnston and his associates show, Meech failed in large measure because citizens in the rest of Canada rejected the concept of Que-

bec as a distinct society and more generally the concept of a Canada constituted by the presence of two (or more) national communities. Individualist Charter values ruled out the more collectivist implications of distinct societies. New identities—gender, multiculturalism and others—challenged the traditional pre-eminence of linguistic and regional identities as the basis for constitutional discourse. Increasingly, Canadians outside Quebec debated their own society in terms that, if not hostile to Quebec, no longer saw national unity in the traditional sense as the chief challenge facing Canadians.

In the Charlottetown round, all the differing interpretations were on the table. In the end, however, the single most important reason for rejecting the accord outside Quebec was that it made too many concessions to the province; and the single most important reason for rejecting it in Quebec was that it did not respond sufficiently to Quebec's aspirations. Indeed, the two communities saw the Charlottetown process in dramatically different terms: for Quebec, it was the search for "Meech Plus"—to wipe out the bitter experience of the "rejection" in Meech. It was to respond to the heightened expectations for greater powers generated by the wave of nationalist feeling in the province

Continued, see "Meech Lake and Charlottetown" on page 66.

and by the work of the Bélanger-Campeau commission and the Allaire report—all of which were a direct consequence of the Meech failure.

English Canadians saw the process quite differently: it was to be the "Canada Round"—responding to the constitutional aspirations that had been ignored in Meech—notably, the Senate, aboriginal self-government, and an expanded "Canada clause." Thus, in the period leading up to Charlottetown, it was as if there were two quite different and disconnected processes going on; at every level the two solitudes were as deaf to each other as at any time in our history. Quebec and the rest of Canada were united, but only in their rejection of the accord.

The referendum defeat had other legacies as well. First, of course, it led directly to the results of the 1993 federal election. While the defeat of the Conservatives has many explanations, one of them certainly is the party's inability to maintain its coalition including westerners and nationalist Quebecers. It was that coalition which initially made it possible to achieve a settlement in Meech, but it was the strains of the Meech and Charlottetown debates that killed it. The election represents the dropping of the second shoe: the referendum defeat provided an enormous impetus both to the Bloc and to Reform.

In Quebec, the normal operations of an alternating party system may well have led to a PQ victory in the 1994 provincial election. But here, too, the failures of Meech and Charlottetown, especially the former, ensured that the PQ would articulate its independence option more forcefully and directly than it might otherwise have done.

WHAT IF?

Where would we be today if Meech or Charlottetown had, in fact, passed? At the time Meech was negotiated, the drive appeared to have gone out of the separatist movement. The accord itself responded fully to the modest list of constitutional requirements then being articulated by the Liberal Quebec government. The symbolic reassurance it provided Quebec might well have taken further wind out of the separatist sails, at least for this generation. And in the rest of Canada, despite the deep fears about the implications of Meech for the Charter, or for national standards, it is likely that hostility would have faded fast as it was discovered that Meech was more a restatement of the status quo than a radical change.

But the failure of Meech immediately provoked a massive reassertion of the nationalist drive among both separatists and federalists. This was a direct consequence of the perceived "rejection" of Quebec following so soon on the heels of the "exclusion" of 1982.

It is harder to predict what might have happened if Charlottetown had passed. It was a much more limited response to Quebec opinion that had emerged after the Meech defeat. But now nationalist opinion was fully mobilized; even if the referendum had won in Quebec and across the country, the PQ would still have found fertile ground. Moreover, the working out of the accord—as the new Senate was constituted, aboriginal self-government was negotiated, and powers were adjusted—would have ensured that constitutional debates would have continued, even if it had been passed.

Thus, the political legacies of both of these failures are: a revitalized separatist movement, a regionally and linguistically fragmented national Parliament, a deepening of

the two solitudes, and the possibility of a new stage in the crisis looming. There are no simple lessons to draw from the past; nevertheless, these earlier experiences have done a great deal to shape the political context of current events and to constrain the range of alternatives that are open to us.

PROCESS

If Quebec were to vote for independence, one of the first questions would be: who would be the interlocutor for the rest of Canada in the resulting negotiations? The PQ assumes it would be the government of Canada.

In the present context, it is possible that the provinces would defer to Ottawa as the prime negotiator, but it is highly unlikely. Provinces would correctly argue that their interests are as much engaged as Ottawa's. This means that their imprimatur would be necessary to ratify any of the constitutional changes that would follow from the dissolution of the federation. With the number of ROC negotiating parties increasing to 11, it is unlikely that their interests will converge.

Second, there are strong constitutional grounds for believing that aboriginal peoples, especially in Quebec, will have a critical role to play and perhaps even a veto. Politically, this claim has been immensely strengthened by the Meech and Charlottetown experiences. It was Elijah Harper's raised feather that helped stop Meech. In Charlottetown, the major aboriginal groups were central participants at the table. Arguably, the precedent or convention has been established that aboriginal consent to major constitutional amendment is required. Once again, the table has become larger.

Even more clearly, the experience of Meech and Charlottetown established citizens as direct consti-

tutional players. Again, it can be argued that the use of the referendum in 1992 established the rule that no major changes are permissible without popular ratification. This precedent will greatly strengthen the argument that any settlement with an independent Quebec should also be subject to a national referendum. It seems clear that citizens are no longer prepared to delegate decision making about their constitutional futures to their elected leaders. This legacy of recent experience can be expected to be repeated a fortiori in an independence situation.

Thus, a time of immense political tension will require state-craft of a very high order. Yet, political leaders are likely to find themselves with little room to manoeuvre. Meech and Charlottetown democratized the constitutional process. Both demonstrated the inability of politicians, however skilled, to manage this kind of political process. This should give pause to those who believe that negotiating independence can be managed effectively by reasonable governmental negotiators with a free, autonomous hand. If we have yet to find an effective process for achieving constitutional change within Confederation, it is equally obvious that we have no process for negotiating an end to the federation.

NARROWING THE OPTIONS

A continuing thread through constitutional negotiations in recent years has been the search for a "third option," something between the status quo and independence. This is what the P  pin-Robarts task force sought, as did Claude Ryan's beige paper following the election of the PQ in 1976. This in many minds was the undefined "renewed federalism" proffered to Quebec voters in the 1980 referendum.

Distinct society, special status, or statut particulier were all versions

of "asymmetrical federalism," the political scientists' most recent contribution to constitutional phrase making ("intrastate federalism" linked notably to Senate reform was the previous entry). To Quebec federalists, asymmetry promised the possibility of national affirmation and extended powers for Quebec without the economic and political risks of separation. To a considerable number of English-Canadian intellectuals, especially on the left, it had the advantage of being a plausible solution to the impasse and of

"The effect of Meech and Charlottetown is sharply to narrow the constitutional alternatives and to rule all off the middle positions off the table."

maximizing the fit between citizen preferences and institutional structures by permitting Quebec the expansive provincial government it wanted while allowing English Canadians to have the more powerful central government they allegedly wanted.

The notion of asymmetry has, however, failed to develop any resonance in the wider population. In the Meech Lake debate, it was decisively trumped by Clyde Wells's competing notion of the "equality of the provinces." Despite the extensive amount of asymmetry in the functioning constitution, the doctrine of provincial equality has ruled it out as a constitutional principle. Long-time opponents such as Pierre Trudeau saw it as leading inexorably down a slippery slope to Quebec independence, as Quebec would seek ever greater powers in an open-ended process with no logical stopping place until Quebec's ties with Ottawa are entirely cut. Others argued that any fair method of achieving

asymmetry would have to link increased provincial powers in certain areas with a diminution of Quebec influence with respect to the same issues in Ottawa.

The point here is not to argue the virtues or the vices of asymmetrical federalism, but to stress the implications of Meech and Charlottetown for its political feasibility. As we have noted, opposition to the distinct society clause in Meech, the most modest conceivable version of asymmetry, was strong. In the 1992 referendum campaign, clear majorities outside Quebec were opposed to recognition of the distinct society (though even greater numbers opposed the 25 percent guarantee for Quebec's membership in the House of Commons). Since then, opposition to the idea has strengthened rather than weakened. One survey showed that 70 percent of Canadians outside Quebec would reject special status, *even if* that refusal were to lead to separation. A June 1994 survey found 83 percent opposed to the idea.

In February 1995, a Leger and Leger survey commissioned by the PQ made the same points:

- 80 percent of respondents outside Quebec believed that Quebec should be treated in the same way as other provinces; 10 percent preferred statut particulier; and 4 percent a sovereign Quebec;
- 72 percent agreed with the statement that the government of Canada should not offer greater powers to Quebec, whatever the referendum outcome; only 17 percent agreed that Canada should offer more powers to Quebec if that made it possible to keep Quebec in Canada;
- in the event that Quebec voted no, 77.5 percent would opt to

Continued, see "Meech Lake and Charlottetown" on page 68.

maintain the constitutional status quo, and only 14 percent would agree to new powers for Quebec;

- asked whether the Québécois form a distinct society within the Canadian people, 66.1 percent said "no"; and
- perhaps most striking, asked whether they would grant Quebec the Meech Lake accord, 75 percent said no.

These are striking figures. If the middle ground between the constitutional status quo and full independence for Quebec was completely eroded during the debates over the Charlottetown and Meech Lake accords, why would English Canadians apparently be *more* willing to negotiate linkages with an independent Quebec than they are to negotiate varied powers *within* Confederation? Thus, in the same Leger and Leger poll, two-thirds agreed that Quebecers have the right to decide by referendum whether to remain part of Canada; 49 percent agreed that in that event Canada should recognize the sovereignty of Quebec; and 58 percent would be in favour of maintaining some form of economic association with an independent Quebec. It is not at all clear why it should be easier to see Quebec as an independent country than as a province, however distinct.

The other paradox has an element of tragedy. All accounts of Quebec opinion seem to suggest that it consists of a minority who are committed to independence, another minority of committed status quo federalists and a large group in the middle that wavers between "soft nationalism" such as sovereignty association and a reformed federalism. It is, of course, within this group that the outcome will be decided. The irony is that the political process as it

worked in Meech and Charlottetown has ended up presenting Quebecers with two stark alternatives—independence and the status quo—that are demonstrably minority opinions and that deny them the opportunity to vote for the options that most appear actually to prefer. It means as well that proponents of the "no" are simply unable to play the "renewed federalism" card that was so successful in 1980.

This, of course, is also the conclusion drawn by the PQ. Reform is impossible within the federation; hence, we must leave it. It may need to be qualified. Thus, federalists can argue persuasively that the status quo is not static. The existing constitutional framework has been enormously adaptable and changeable in the past and there is no reason not to expect this to continue in the future. This is true, but "flexible federalism"—which could even embody a considerable degree of de facto asymmetry—has a somewhat bureaucratic ring to it. It does not have the symbolic ring of explicit recognition that distinct society does.

The same might be said for the non-constitutional generalized decentralization to which Ottawa seems currently to be moving. Federal withdrawal from shared areas, disentanglement, and conversion of transfer programs (which already have few conditions) into bloc grants may be attractive, but likely more so to governments than to citizen voters. In addition, defenders of asymmetry, such as Judy Rebick, would argue that such an evolution would deprive many English Canadians of the solution they would opt for if given a choice—namely, a stronger central government.

Defenders of federalism, then, have one hand tied behind their backs. Meech and Charlottetown were both predicated on widespread arguments that status quo federal-

ism was a failure that must be reformed. It is harder now to turn around and defend it without qualification.

Thus, the effect of Meech and Charlottetown is sharply to narrow the constitutional alternatives and to rule all of the middle positions off the table. There may be advantages in this clearing of the air as one by one the ambiguities and contradictions have been stripped away. Now we are faced with a clean, once-and-for-all, no-false-illusions choice. Let's just get it over with.

The flaw in that argument, of course, is that such a clean choice is itself an illusion: a "yes" vote will not free us from the tarbaby since it will inevitably entail a drawn-out, tension filled, complex process of disentanglement, along with the equally difficult need to reconstruct what is left of Canada. After previous alarms about the "knife to the throat," it is highly unlikely that a "yes" vote would be followed by new offers of an asymmetrical federalism from the rest of Canada. A "no" vote is also likely to keep the constitution on the table in Quebec. It is even less likely to provoke offers of renewal from the rest of Canada. More likely is either ROC triumphalism—"the dragon was a myth; we have slain the dragon"—or ROC complacency—"there is no problem." And that will give new ammunition to later indépendantistes.

Thus, we have a heavy price to pay for the failure to find a solution in the Meech Lake and Charlottetown rounds. It has led us to a dead end with no easy exits. And it may have cast our constitutional discourse into a framework that satisfies neither side.

Richard Simeon is a Professor of Political Science at the University of Toronto.



LUCKY AND SMART? THE FEDERAL LIBERALS' REFERENDUM STRATEGY

by Reg Whitaker

The federal Liberal government faces severe constraints in confronting a sovereigntist government in Quebec.

A contrast with the situation of the late 1970s in the run-up to the first sovereignty referendum illustrates the scope of the restraints. The Trudeau Liberals of that era relied upon positive inducements, both *constitutional* (that is, "renewed federalism" as an alternative to sovereignty association) and *economic* (that is, visible federal spending in Quebec to demonstrate "le fédéralisme rentable" or profitable federalism). They could also rely upon the effective personal intervention of Pierre Trudeau to sell federalism to the Québécois.

THE CONSTRAINTS OF REFERENDUM '95

After the Meech Lake and Charlottetown accords, positive constitutional inducements to Quebec are no longer acceptable. "Flexible federalism" has been put forward as an alternative. In theory, the decentralization of powers to all provinces could serve as a surrogate for special powers to Quebec. In the 1995 Martin budget, the Canada social transfer (CST) was advanced in language that suggested it was an answer to the "cloud" of Quebec separatism. While the CST does no more than reduce federal spending in programs that were always within provincial jurisdiction, the Liberals have been at pains to assert that they are not withdrawing from their role in setting national standards (query the credibility of this assertion). Downloading costs, and thus shifting the primary responsibility for unpopular cuts in specific programs,

to the provinces is scarcely designed to appeal to Quebec nationalists. Moreover, central to nationalist sentiments in Quebec has been a desire for *symbolic* recognition of Quebec's distinctiveness; hence, the popularity in Quebec of Meech Lake. Flexible federalism offers no public symbolism, only intergovernmental nuts and bolts.

In the fiscal climate of the late 1990s, positive economic inducements to Quebec are ruled out. Regional sensibilities outside Quebec will not stand for any appearance of favouritism to that province, and the Reform party has articulated a powerful ideological opposition to any "special treatment" of "special interests." Moreover, international investors will be quick to decry politically motivated expenditures that add to the debt burden.

Nor can the Liberals rely upon the personal intervention of Jean Chrétien, who, despite extraordinary approval ratings *outside* Quebec, lacks Trudeau's commanding presence *in* Quebec. Worse, unlike Trudeau, Chrétien cannot even claim to be the dominant *federal* voice in Quebec, outflanked as he is in Parliament by the Bloc québécois and its charismatic leader, Lucien Bouchard. Provincial premiers, especially those from the western provinces, are less deferential to Mr. Chrétien on national unity issues than were their predecessors to Trudeau.

Another wild card in 1995 is the emergence of the Reform party as the *de facto* official opposition in English Canada. Reform does not share in the national unity consensus that pervaded all parties in the

1970s and 1980s, and is much readier to contemplate the departure of Quebec on acceptable terms; Reform might even gain politically from such a development. Chrétien can no longer count on a spontaneous consensus on national unity.

"WHAT, ME WORRY?"

However formidable the constraints upon the federalists, the PQ/BQ face powerful barriers to success. It is evident by the spring of 1995 that the numbers are simply not there to win a referendum. Even while the PQ and BQ are gaining in popularity as parties, the sovereigntists have failed to win over new converts to their cause in sufficient numbers to gather momentum. Moreover, economic insecurity remains a crucial area of vulnerability: the more marginal and less secure elements of Quebec society are fearful of the consequences of a dramatic break, with all the uncertainty that this entails. Another new factor in 1995 is the refusal of Quebec's aboriginal peoples to recognize any move to break Quebec away from the federal state: this factor adds further uncertainty to the outcome of a "yes" vote.

In this context, the governments in Ottawa and Quebec City have been gearing up for a prolonged "cold war" that will culminate when a vote is actually held. There is considerable asymmetry in this process. The PQ has given decisive priority to the achievement of sovereignty and, with the BQ running interference in Ottawa, can prioritize its governmental tasks toward this one all-consuming end. The Liberals have no such luxury and indeed cannot even be *seen* to be giving too much attention to Quebec. The Chrétien cabinet has given national unity a high priority, but less than

Continued, see "Federal Liberals' Referendum Strategy" on page 70.

that accorded deficit reduction. In terms of machinery, there is a special advisory group on national unity attached to the Privy Council Office, and Liberal Lucienne Robillard, fresh from capturing a seat from the BQ in a byelection, is responsible for coordinating referendum policy. Still, these moves are modest when compared with the extensive activities of the National Unity Office in the late 1970s and Trudeau's aggressive leadership in the anti-separatist campaign.

Realistically recognizing the limitations of his own leadership and those of his party, Chrétien has wisely chosen to assume a relatively low profile, despite the provocations of the BQ and Reform to lure him into the front lines of the battle. His slogan is, in effect, that of *Mad Magazine's* Alfred E. Neuman: "What, me worry?" Leadership of the federalist cause in Quebec will be left mainly to the Quebec Liberals and the No committee when the campaign gets under way. So long as the polls indicate the likelihood of a No victory, "What, me worry?" is, indeed, a rational policy choice for an Ottawa with serious disabili-

ties when contemplating direct intervention in Quebec.

PLAN B: NEGATIVE INDUCEMENTS

If, at any point, the polls begin to shift toward the possibility of a Yes victory, however narrow, there will be panic on the federalist side. At this point, a federalist "plan B" may supplant the low-key approach. Plan B will take for granted that in the absence of credible positive inducements, *negative* inducements will have to come to the fore: threats that separation negotiations will go very badly for Quebec and that independence will be catastrophic for Quebecers' standard of living. Economic intimidation has the advantage of playing to the main weakness of the sovereigntist cause: insecurity in the face of uncertainty. Moreover, the federal Liberals will not have to take the lead; provincial premiers, the business press, banks, think tanks, and even the bond-rating agencies can be counted on for warnings, threats, dire predictions, and a belligerent contempt for the democratic legitimacy of the Quebec majority. Much of the flavour can be gathered from studies already produced for the C.D. Howe and other institutes, and from col-

umns by Andrew Coyne in *The Globe and Mail*.

The danger implicit in plan B is that once it is unleashed, it will have unhappy consequences, whatever the result of the referendum. If it does not discourage a "yes" vote, the rest of Canada will have been whipped into an intransigent mood for negotiations. If it does work, péquistes will develop a myth of the "stolen victory." Already Parizeau has been referring to the C.D. Howe and other critics as "economic terrorists." He is laying the ground for a counterattack after the tactical retreat of a referendum defeat.

The Chrétien strategy is preferable—provided that the prime minister can maintain control of the federalist agenda. By concentrating Ottawa's energies on economic management—deficit reduction, even-handed regional treatment in an era of negative redistribution, enhancing trade opportunities—while maintaining a calculatedly low profile vis-à-vis the "separatist threat," he has shown so far that he can be not only lucky but smart as well.

Reg Whitaker is a Professor of Political Science at York University.



WHATEVER HAPPENED TO POLITICAL DEBATE: OR, HONEY I SHRUNK THE SPACE!

by Shelagh Day

There is a lot happening that should concern people in the rest of Canada. We should be engaged in a vigorous debate about the future of federalism and the impact of neo-liberal economic policies on the Canadian state. The fact is that fundamental changes to the shape of the Cana-

dian federation are being made now without a clear admission that this is occurring.

The recent federal budget significantly alters the relationship between the federal and provincial governments by shifting power to the prov-

inces, dismantling the Canada Assistance Plan, moving to block funding for Canada's social programs, and eroding the federal government's capacity to use its spending power to set and enforce national standards. It was the proposal to do this through amendments to the constitution that motivated many progressive social justice groups in the rest of Canada to oppose the Charlottetown accord, especially when the erosion of national social programs, and of the federal spending power, was combined with the

accord's failure to meet the demands of Quebec and of aboriginal women.

Now the Liberals are giving us Charlottetown II: the same combination of too much decentralizing to keep national social programs safe and too little decentralizing to satisfy the aspirations of Quebecers.

The same groups who are concerned about these neo-liberal economic policies, and the threats to national social programs, are those who have shown themselves most likely to support Quebec's aspirations for change and most willing to see negotiation. The space for their participation in political debate, the openings for exchange with governments and with each other, are very important. That this space is currently being deliberately downsized by governments and the media makes the social context for the Quebec referendum more unstable.

CONTROLLING THE POLITICAL SPACE

How is political space for debate about Quebec and the future of the Canadian federation being reduced? It is being done by defining narrowly what is on the agenda for debate, and by determining who can occupy the space for political debate that is created by government and the media.

At the moment, the Liberals limit what is on the agenda for debate by pretending that they are doing nothing themselves that affects the future of Canadian federalism and, therefore, that there is nothing for people in the rest of Canada to talk about until Quebec makes some decision. They pretend that neo-liberal economic policies do not fundamentally change the role of the state. Simultaneously, they accuse the PQ and the Bloc of wanting cataclysmic and unnecessary change.

In addition to agenda-limiting efforts, the Liberals have taken in-

struction from the consultations held during the Charlottetown round and learned to control tightly the political space that government provides. Community organizations such as the national women's groups can make a legitimate claim to have originally designed current forms of public consultation used by government. Consultations were intended to ensure that between elections, those groups that do not otherwise have easy access to government could have input into decisions that would directly affect them. The invention of consultative processes represented an effort to expand democratic practice by making some room for those who are otherwise marginalized in the political process and to ensure that significant between-election decisions were not made without public participation. The idea was to create a bigger political space. Through consultation, groups could talk to government and hear each other at the same time; they could be involved in a more dynamic political process of learning and exchange. To deal with amending the constitution, it was necessary to create some more inclusive and participatory process in order to address Meech Lake's lack of credibility.

Now, however, groups find that consultation has become a tool that governments use not to open space for their participation but to control and confine it. The wide-ranging, nationally televised consultations of the kind that occurred during the Charlottetown round are happening now in Quebec, but not in the rest of Canada. Although some participants would say that even the constitutional conferences were carefully controlled, they allowed far more scope for debate and exchange than we have seen since then.

Through more recent consultations on social program review, the

Liberal government has manipulated the public by producing overwhelming numbers of papers and proposals, providing little time for discussion and response, issuing workbooks that allow only predictable answers to comfortable questions, selecting who can speak, and dismissing genuine concerns as being merely self-interested and economically naive. Given the fact that the budget provides the answer to the questions posed by Axworthy about the future of Canada's social programs, the most recent round of consultations was simply a tactic to divert our attention while the axe was falling. Ironically, then, consultation is being transformed from a process for hearing from less-powerful groups to a government technique for silencing the citizenry.

THE MEDIA'S BIAS

The media, too, are currently stifling political debate through a number of techniques. Prominent among these is the decision to discredit or ignore those groups that they call "special interest groups." The use of the term itself is discrediting, implying as it does that the concerns of these groups are unrepresentative and not in the general interest. It is an indication of the mindset of both government and the media that this term, coined in the United States to refer to powerful business lobbies, is now being used to refer to groups that represent people who are marginalized in the political process. Susan Delacourt writes in *The Globe and Mail* that the media have "lost interest" in these groups because they are "too predictable and too extreme."

The charge of being "too predictable" is problematic because this media attitude makes it difficult to engage in political debate about

Continued, see "Whatever Happened to Political Debate" on page 72.

"Whatever Happened to Political Debate" continued from page 71.

longstanding and deeply rooted problems such as the relationship between Quebec and the rest of Canada, or the situation of disadvantaged people. The demand that news always be new effectively precludes debate over the central problems inherent in our structural relationships. From this perspective, historic inequalities and discontents are old news and, hence, boring. The media's bias is also hypocritical because it is clear from reading or watching daily coverage of these events that the media are happy to provide a platform for those very predictable voices from the right that advocate dismantling Canada's social programs and the aspirations of Quebec. The media's commitment to the ostensibly new is actually a commitment to the old and powerful.

As a result of these combined behaviours on the part of the government and the media, the space for inclusive political debate by progressive political forces is diminished. That this shrinking of democratic space is dangerous, given the enormity of the issues facing us, is obvious. It is essential now that progressive groups in the rest of Canada invent new ways to take political space in order to ensure that we can participate in decisions regarding our relationship with Quebec and the shape of the future.

Shelagh Day is a human rights activist and researcher, and Co-Chair of the Justice Committee of the National Action Committee on the Status of Women.

THE QUEBEC REFERENDUM: THE LONG VIEW

Part Two of a Two-Part Series

by Alan Cairns

ALL QUIET ON THE REST OF CANADA FRONT?

Rest of Canada (ROC) is a residual category. ROC is headless. No government speaks to it or for it. Yet, it clearly has a potential existence as a successor state, or several, should the referendum pass and Quebec secede. The Quebec referendum, therefore, is a forcing ground for ROC self-consciousness. Given the inhibitions that prevent the federal and provincial governments outside Quebec from fostering and defining ROC, these tasks will be undertaken by academics, journalists, editorialists, publicists, participants in "Whither Canada?" conferences, writers of letters to the editor, and other uncoordinated activists imagining alternative futures for Canadians outside of Quebec.

What once was unthinkable and unthought—Canada without Quebec—begins to enjoy a furtive existence as a future that might happen and this future begins to be fleshed out by those who live by the pen. At the level of everyday consciousness, a dim recognition grows that Canada may turn out to be a transient experience on the road to smaller futures. Thus, the Quebec referendum, in which ROC is cast in the role of an audience, is nevertheless a powerful socializing experience for non-Québécois. The brutally simple distinction between who is in the audience and who is casting votes is, in itself, an inevitable stimulant for non-Québécois to think of future patterns of statehood in which Québécois are foreigners. As the "nation that dares not speak its name"

(Phil Resnick) struggles to the surface, it is aided in its search for an identity by volumes such as *English Canada Speaks Out* (Jack Granatstein and Kenneth McNaught, eds.), *Plan B: The Future of the Rest of Canada* (Gordon Gibson), and *Thinking English Canada* (Phil Resnick).

The Reform party's role in the politics leading up to the referendum deserves special attention for it is positioned, in terms of its geographic support and hardline constitutional philosophy, to play a vanguard role for ROC if the polls indicate a possible "yes" victory. Furthermore, it is not constrained as other parties are, from saying what some of its supporters think, by the possession of office.

The natural tendency to concentrate attention on the referendum's unfolding in Quebec should be supplemented by recognizing and monitoring the less visible evolution of ROC self-consciousness outside Quebec. Even if the referendum is decisively defeated, the renewed togetherness in one country of Canadians will be understood as a fragile relationship, not as an unquestioned component of a stable order. A mutual wariness will survive and a sense of conditionality and contingency will not easily fade from memory following the second attempt of Quebec governments in 15 years to take their people out of Canada.

If a victory of the "no" is only marginal, if a francophone majority has voted "yes," if the "yes" support is considerably higher than it was in

1980, with the likely consequence that another referendum will take place before too long—then even limited understanding of the evolution of ROC self-consciousness will be crucial knowledge for anyone seeking to reduce future shock in the next decade for Canadians.

An additional point needs underlining. The virtually monolithic unwillingness of the political elites outside of Quebec to favourably and publicly discuss a future Canada from which Quebec has departed may produce at least a mini-version of the Meech Lake gap between official elites and masses. This time, the tendency of the grassroots level to say “let Quebec go” will be fostered by hotlines and by a handful of politicians who will succumb to the temptation to break ranks.

THE ROAD FROM ETHNIC TO CIVIC NATIONALISM

In Quebec, the referendum will be a case study of the distance that society has travelled on the road from ethnic to civic nationalism, to employ the language of the sociologist Raymond Breton. To what extent do the politics and rhetoric of the referendum stimulate or transcend the ethnic, linguistic, and national cleavages among the anglophone, allophone, francophone, and aboriginal citizenry of Quebec? What is the relative incidence of an adapted Gertrude Stein thesis that “a vote is a vote is a vote,” versus the competing position that the votes of the members of the majority francophone community—on whose behalf, after all, independence is sought—should be worth more than the votes of the others? How the politics of the referendum campaign are played out along, of course, with the actual voting data, will reveal the extent to which Quebec is internally a deeply federal society with, in Charles Taylor’s term, its own “deep diversities” within. Compet-

ing statements about how large the “yes” majority will have to be to have its legitimacy accepted, will indirectly be statements about the presence or absence of a belief that the Quebec people are not a homogeneous people for whom simple majoritarianism is good enough.

A referendum provides a remarkable opportunity to examine fissures among the citizenry within and without Quebec. It is also a catalytic

“A referendum provides a remarkable opportunity to examine fissures among the citizenry within and without Quebec. It is also a catalytic phenomenon that will modify how we think of each other and that will rearrange the cleavages and identities we have inherited.”

phenomenon that will modify how we think of each other and that will rearrange the cleavages and identities we have inherited. No matter who wins or loses, we will all be different people when the referendum is history.

Referenda are not football games that produce discrete results of only momentary significance (see Part One of this article, *Canada Watch*, January/February 1995). They are instead transforming events that do not leave the psyches, even of those seemingly relegated to the audience, unchanged by the brush with history that a referendum necessarily is.

A PRE-REFERENDUM POSTSCRIPT

The referendum observer should not forget one powerful lesson from our recent constitutional experience. The politics of the referendum do not stop after the votes are counted. Those referendum elites who sought votes up until the polls are closed

will transmute themselves into historians after the results are in. Before the sweat has dried on the ballots, a new battle to provide serviceable interpretations of the results will be under way. We have seen it before. The political success of the indépendantistes in affixing the betrayal label to Trudeau’s role in the 1980 referendum campaign, given the contents of the 1982 *Constitution Act*, is only the most dramatic example of the adversarial politics of fashioning collective memories that are inherent in later interpretations of highstakes constitutional politics. In fact, the professional manipulators of memory will have done considerable preparatory work throughout the campaign with their suggestions of bias, unfairness, deception, etc.

The two major reasons for abusing history are to delegitimize a victory by one’s opponents and to explain away one’s own defeat as not really having the negative meaning that the numbers appear to suggest. Shrewd politicians will keep the preceding in mind throughout the campaign. Shrewd observers should not forget that they are observing shrewd politicians.

Alan Cairns is a Professor of Political Science at the University of British Columbia.



NEGOTIATING WITH A SOVEREIGN QUEBEC: FOUR SCENARIOS

by Daniel Drache

Canadians have entered their referendum year of living dangerously, unprepared for the decisions that lie ahead. The national mood is increasingly surly. All across the country, people are impatient to defeat the referendum. Canada's elites, too, have convinced themselves that 1995 will be a rerun of the 1980 referendum. This is a serious mistake. There is a better than 50/50 chance that Canada will be negotiating with a sovereign Quebec in the immediate future. So if English Canada is not to sleepwalk through history, it's time to wake up and get streetwise.

SCENARIO 1: THE SYSTEM DYNAMIC HAS BROKEN DOWN

The progressive middle has lost sight of the baseline reality pushing Quebec toward its long-time goal: la belle province remains a beleaguered minority in a majoritarian federal structure. It cannot win within the existing rules of the game. It can make alliances with other provinces to extract new concessions from Ottawa, but it can never be in control of its own destiny. Its constitutional future in Canada is contingent on the goodwill of others. Therein lie the roots of the present collision course.

Quebec's preferred option was staying within federation, but Canadians refused Meech Lake's modest offer of entrenching Quebec's special status in the constitution. Ottawa tried a different tack, but Canadians turned down Charlottetown because they do not want to see the national government devolving power to all 10 provinces. Canadians want a country, not a federation

of warring provincial entities. So, how does an exasperated majority respond to an internal threat of seismic proportions? The answer is: with perplexity, anger, and miscomprehension. English Canada has now placed its future in the hands of Chrétien's Liberal government. But is it a good bet?

SCENARIO 2: TEAM CANADA OR TEAM QUEBEC—HOW DO THEY COMPARE?

Referendum '95 is a very different affair from the 1980 vote that the feds won. The PQ lost last time because Trudeau held open the prospect of constitutional renewal. This time there is no federalist shining knight ready to rescue Quebec federalists and Quebec-leaning federalist nationalists. Even pollsters concede that Parizeau has seized the initiative and kept it. By contrast, Daniel Johnson's popularity has dropped 10 points in the public opinion polls since October 1994. With no constitutional offers on the table, the federalist forces will be going into the referendum fight with nothing concrete to propose. A negative defence of the status quo is not much of a defence. Even if support for sovereignty and independence has not grown beyond the 45 percent mark, support for sovereignty is not declining. Polls released at the end of March put the PQ within hailing distance of the 50 percent mark.

Ottawa wants to forget that the Parizeau government is popular and represents in the eyes of Quebecers an alternative to Ottawa's deficit-obsession image and the reduction of social services that has become

its preoccupation. Pretending that sovereignty is not popular and a real option for Quebecers after the rejection of Meech Lake and Charlottetown is dumb, big time.

Paradoxically, Chrétien is riding a crest of popularity in English Canada that surpasses Diefenbaker's and even St. Laurent's. Ottawa wants to decentralize the country, and though decentralization may be applauded by some English Canadian premiers, it will also help Parizeau sell the "yes" vote to Quebecers. When Ottawa makes the provinces responsible for social programs without giving them more fiscal resources, the sovereignty cause looks more appealing than ever. With fewer transfer payments going its way, Quebec has less reason to remain part of the Canadian federation.

The dangerous mistake is that by playing hardball—"our way or no way"—Quebeckers will increasingly feel isolated from the rest of Canada because their special needs are not being met within the existing framework of Canadian federalism. On this point, Parizeau offers Quebecers two tangible advantages: an end to the duplication and overlap created by federal-provincial programs, and a government empowered to protect Quebec's identity and economy in a world without borders. By contrast, Chrétien's only offer on the table is a doomsday scenario—"if you go, you will fail." Visions count more than ever in the world today. In 1980, the feds had one; in the '95 return match, they don't.

But Chrétien's major political weakness is no guarantee that Parizeau will win the fall referendum. To attain independence, the PQ has a viable political project; troops and resources on the ground; the capacity to mobilize people when it counts; and, in Parizeau and

Bouchard, topflight leadership. What, then, is missing?

The most important ingredient in short supply is the heat and passion that is needed to galvanize a "yes" vote in sufficient numbers to put the referendum over the 50 percent mark. Nationalism is as potent a force in Quebec politics as ever but it has lost its vision of what Quebec society might be in the future. Quebeckers are like their counterparts in English Canada. They want better government, one that is less wasteful, more open, and more accountable; they want a renewed sense of citizenship and a government that can deliver a top-end economic performance.

This is why Parizeau could lose. Nationalism is not enough. There is a second obstacle as well. There is no external threat so powerful as to force the soft nationalists and disillusioned federalists to go the extra mile and support the referendum. The immediate question is whether the PQ will be able to find those votes in the ranks of the soft nationalists, disillusioned federalists, the over-65, and the under-25 to get the narrow majority it expects. The votes are there if Mario Dumont and the Action démocratique get on side. They stand between success and failure. They have the votes that Parizeau and Bouchard need if the referendum is not to end in only a "moral" victory. So Parizeau and Bouchard will have to change their game plan and propose a question that links Quebec's sovereignty to the negotiation of a new economic relationship with Canada.

SCENARIO 3: THE VOTE— THREE POSSIBLE OUTCOMES

As matters now stand, there are only three scenarios in the offing. First, the "yes" vote obtains a 40 percent score, which is no better than the 1980 referendum. With Bouchard and Parizeau heading the Quebec campaign, this prospect is

doubtful. Second, the "yes" side comes within a hair's breadth of winning with 48.3 percent support. This level of vote would be better than the PQ did in the 1994 election that brought it to power. Under this scenario, the "yes" campaign would have garnered 60 percent of the vote chez les Francophone, but not enough to go over the top. Finally, a simple majority of Quebeckers' vote of 50.2 percent for independence. This is the best outcome that the PQ government can reasonably expect at the present time. It, too, is not without its downside.

Modern referendum campaigns usually are won or lost on the narrowest of margins, as happened in France, Sweden, Norway, and Denmark, all of which held a referendum to adopt the Maastricht treaty. The results have been breathlessly close because modern society is so divided on major issues of national sovereignty that there is no clear way for Europeans or anyone else to predict the real consequences of a "yes" or a "no" vote. When the issues are so complex and difficult to grasp, a big win or a big loss is not in the cards.

Quebec voters are in an identical situation. How does the PQ convince a "doubting nationalist" whether Quebec is entitled to use the Canadian dollar? Whether it will have its own currency? Whether an independent Quebec can make it on its own? Or whether political sovereignty will be but the first step to renegotiating its interdependency with Canada, however lengthy and difficult the process?

This is why Quebec opinion will continue to be split down the middle. A "yes" vote that is stronger than expected will create a new highwater mark of support chez les indépendantistes. For federalists, it will be interpreted as a clearcut victory even if the underlying issues have not been resolved. So, a "yes" vote is, in the end, a vote for renewal of Quebec's relations with Canada.

A "no" vote also comes with a high price—a third face-off, political deadlock between Quebec and Ottawa, and an embittered nationalist movement in Quebec that will look to the right for answers to explain its defeat.

SCENARIO 4: WILL ENGLISH CANADIAN POPULAR OPINION EVER ACCEPT A "YES" VOTE?

There is no single, monolithic English-Canadian opinion about negotiating with a sovereign Quebec. There are, of course, three very different public opinions. The "stick-it-to-'ems" is the first and the most shrill and extreme in its views. Largely rooted in Reform party supporters out west, it also exercises a powerful grip on many of Toronto's media elite and think tanks like the C.D. Howe Institute. This group sends an unambiguous message that if Quebec goes, it will have no relations with English Canada and no special relationship with regard to the dollar or any other matter. It is the apocalyptic view that there is no Canada without Quebec! Its premise assumes the worst-case scenario as the only option on offer and its message is brutally frank—"read my lips, vote Canada."

About 15 percent of Canadians identify with this tendency, but its numbers and influence could grow if the political middle does not get its head around other possibilities. Business has not endorsed the stick-it-to-'em option for good reason. Major corporations and banks have large investments in Quebec as well as many customers and thousands of employees. For the time being, they do not want to risk angering their employees and customers by not respecting the democratic will of Quebeckers. Their caution and realism could change if in the referendum run-up Canada-Quebec relations become bitterly polarized.

Continued, see "Negotiating With a Sovereign Quebec" on page 76.

"Negotiating With a Sovereign Quebec," continued from page 75.

Then there are the "renewalists," the second public, comprising federalists who would use the hung jury scenario to try one last go-round of negotiating with Quebec. The renewalists draw their strength from largely federal Liberals and publically minded Canadians. This strand of opinion faces an uphill battle to convince Canadians that it is worth it to reopen constitutional negotiations with the sovereigntists.


Finally, there is the "let's-talk" crowd, the largest body of Canadian opinion. It consists of "middle Canada" including popular sector groups, trade unions, ordinary Canadians, and disaffected elites who are committed to the democratic process. If there is a stalemate, English Canadians may eventually see this option as the one that makes the greatest practical sense. When the IRA and the UK are talking, and the

ANC and the Afrikaaner minority are working together inside the same government, can Canada and Quebec afford the luxury of a total rupture? Doubtful. Canada will eventually have to negotiate with a sovereign Quebec because in an era of globalization there is a growing recognition that a made-in-Canada beggar-thy-neighbour policy is not sustainable either for Ottawa or for Quebec.

The current draft bill before the Quebec National Assembly defines political sovereignty as the complete transfer of power to the Quebec national assembly, constitutional empowerment in all legislative matters, and a *Charter of Rights* with its own judiciary. Yet, a fully sovereign Quebec cannot change the reality that Quebec and Canada share a common space and remain interdependent in all areas—not only in their markets but also on questions about culture, the environment, and geopolitics. The first task of a sovereign Quebec

and a sovereign Canada will be to negotiate a new framework to manage their interdependence.

This is why the "let's-talk" option holds the greatest promise of political renewal, however daunting the negotiating process turns out to be. Business, labour, and popular sector groups in English Canada have already recognized Quebecers as separate and sovereign entities within national organizations as diverse as the Canadian Manufacturers Association, the Canadian Labour Congress, and the National Action Committee on the Status of Women. The point is that if non-governmental organizations can arrive at a new relationship with Quebecers, is it not possible for Quebecers and Canadians to do the same when the negotiations begin?

Daniel Drache is Director, Roberts Centre for Canadian Studies, and a Professor of Political Economy at York University. 

THE UNITED STATES AND AN INDEPENDENT QUEBEC

by Stephen Clarkson

One of the few aspects of Quebec's future under sovereignty that has been underdiscussed is the rather blithe péquiste view that Uncle Sam will make things all right. But the fantasy of sovereign bliss in a benign continental superstate does not hold up long when one tries to think through the short- and medium-term prospects for an independent Quebec within North America's political economy.

QUEBEC AND WASHINGTON IN THE SHORT TERM

The PQ's draft *Act Respecting the Sovereignty of Quebec* assumes that a sovereign Quebec can slip into the North American free trade

agreement (NAFTA) with no questions asked. But most knowledgeable experts believe that NAFTA's accession clause would apply if a newly minted laurentide state requested admission. This would require the approval of not only the Mexican and Canadian governments, but also that considerably more formidable body, the U.S. Congress. Here, the "United States" should be equated with self-interest: any forecast of Quebec's medium- and long-term prospects in North America must consider the United States' current strategic concerns.

With no significant military concern about its transpolar security,

Washington has been able to strike a calm but firm attitude toward the troubles on its northern border, confident that its political and economic interests there can be accommodated. Politically, Washington would prefer to deal with a united Canada but, with Premier Jacques Parizeau having turned out to be a particularly unscary neo-liberal, it would have no cause for ideological trepidation. Still, political instability would have economic implications, and the U.S. government does not need either a new currency to support or, worse, further reasons for global speculators to mount another attack on the American dollar.

Washington would proceed to recognize Quebec provided that Canada was satisfied with its separation agreement (which will turn on Quebec's shouldering 25 percent of Canada's debt) and assuming that

the Cree or other native groups did not exert their formidable capacity to mobilize opinion in the United States behind their demands. The U.S. administration might toy with the idea of offering both Quebec and the truncated Canada membership in the G7, but it would soon realize this was a non-starter: other countries—including Mexico, whose trade with the United States is twice the size of Quebec's—would clamour for admission.

Economically, Washington knows that pre-referendum Canada constitutes its largest commercial relationship. Its trade with Quebec alone is of the same order as its sales to France or Italy, which means it is nine times its exchanges with Chile. So it can afford to remain equanimous only as long as transborder flows of goods, services, and capital remain undisturbed and its transnational corporations' positions, rights, and freedoms remain unchallenged.

Concerning the more than 100 other agreements that govern the various aspects of the complex interdependency north of the Rio Grande, Washington would endorse Quebec's quick admission to such institutions as the International Joint Commission and inclusion in such bilateral agreements as the Defence Production Sharing Arrangements and the Auto Pact.

NORAD and NAFTA are something else. The Pentagon would have little reason to welcome Quebec into the command structure of NORAD as a full partner. Trade policy officials in both the administration and Congress would welcome the opportunity to pursue their long list of global trade objectives.

For a decade now, Washington has been pressuring Canada's subnational jurisdictions. In British Columbia, a series of countervailing actions has led to Washington's taking of a direct role in dictating the province's forest-maintenance

policy. In Ontario, it has used the GATT to beat back the provincial government's capacity to protect the local beer industry through its liquor monopoly.

East of the Ottawa River, the general phenomenon called Quebec, Inc. would suddenly come into focus. The whole range of Quebec City's intervention in the economy—from procurement policies to investment subsidies—that appears to U.S. officials as variations on the theme of unfair subsidy would likely become the price of admission.

"The fantasy of sovereign bliss in a benign continental superstate does not hold up long when one tries to think through the short- and medium-term prospects."

- Quebec's exploitation of its comparative advantage in cheap hydroelectric energy has already caused cries of foul play to be heard in Washington about the unfair advantage Quebec has given its magnesium smelters.
- Quebec's marshalling and deployment of the provincial residents' savings (mouvement Desjardins) and pension contributions (Caisse de dépôt) in support of the expansion of Québécois businesses defies the principle of national treatment or non-discrimination against foreign capital on which the new world capitalist order is based.
- Quebec's protection for wine and liquor through a province-wide distribution monopoly is equally unacceptable, as is support for dairy production with various subsidy programs.

Quebec has been partially shielded from all these issues thanks to its subnational status in the Canada-U.S. free trade agreement (FTA) and NAFTA. Full membership in the club would

bring Quebec under the direct discipline of the agreements.

Negotiating Quebec's terms of admission would also provide a convenient venue for raising other issues on the American agenda. For instance, the new GATT agreement accepted the American demand to extend trade-related intellectual property rights (TRIPs), though France successfully insisted on an exception for the audio-visual industry in order to protect its culture from accelerated Americanization. Seeking a precedent to be used at the next round of GATT negotiations, Washington will be particularly insistent that Quebec abandon the "unfair" protection it gives its publishers, film producers, and television sector. By the end of the day, the much vaunted cultural exemption in the FTA would be a dead letter. Like Brian Mulroney before him, Jacques Parizeau has gone out of his way to insist that free trade is the sine qua non of his country's economic survival. A leader so patently desperate to strike a deal would have next to no leverage to use against Washington, whose need for an agreement would be minimal. Quebec would have no choice but to cede national treatment in the cultural industries and trust in the protective power of la différence. Otherwise, it would be denied the NAFTA status it believes it will need if it is to restore the confidence of foreign investors.

QUEBEC'S MEDIUM-TERM POSITION IN NORTH AMERICA

Sovereigntist thinking about Quebec's future in a reconfigured North America lays great store on the assumption that it would be like belonging to the European Union where a small state like Holland or a subnational entity like Catalonia is better able to flourish than if it were still an unattached nation or an old-fashioned province.

Continued, see "The United States and Quebec" on page 78.

*"The United States and Quebec,"
continued from page 77.*

Yet the North American continental state is in many respects the antithesis of the European model:

- The European Community has been developed over the course of five decades gradually, democratically, cautiously. North America was remodeled in the space of five years as a result of hasty, almost desperate negotiations by government officials and business interests from which a generally antipathetic public was excluded.
- The EU has an elaborate array of supranational executive, administrative, legislative, judicial, and functional institutions to which the member states devolve parts of their sovereignty. The new North American state has an astonishingly weak institutional structure.
- Weighted participation in the EU gives smaller members disproportionately more power and bigger members disproportionately less. Apart from the one-country-one-vote arrangement in the

NAFTA's weak trade commission, the absence of democratic representation in supranational institutions means that the United States has increased its already vastly greater power while Canada and Mexico have lost clout.

- Free trade creates both winners and losers. The EU has defined its social values and has established policy mechanisms that can redistribute wealth across national borders from the wealthier regions to the poorer. The new North America has no such instruments for redistribution.

An independent Quebec in North America will probably be weaker. It will have lost the partial exemption from the disciplines of FTA and NAFTA that provincial status afforded it. It will have lost the capacity that "French power" in Ottawa—disproportionately greater power for Quebec in federal politics—gave it to have Canada defend its interests in Washington.

The paradox is that once Quebec achieves its long-coveted sovereignty, it will have to divest itself of the chief economic policy instruments it needs if it is to compete

successfully in the U.S. market. Like other jurisdictions that have accepted the principle of national treatment, it would be forced to concentrate its resources on developing its social assets—its transportation and education system and public health facilities—as an alternative to an activist collaboration with selected economic leaders. And these national champions—not just Consolidated Bathurst, but Power Corporation itself—would now be vulnerable to takeover by American transnationals.

In effect, once Quebec has savoured what symbolic satisfaction it can extract from its sovereignty, it faces a difficult choice. Either gain membership in NAFTA and face cultural decline or stay out of NAFTA and face economic decline. The dilemma of the péquistes is dreadful: whatever increase in sovereignty they can win with a formal declaration of independence would most likely translate into a decreased autonomy in the continental political economy.

Stephen Clarkson is a Professor of Political Science at the University of Toronto.



THE STATUS QUO: WORKABLE, BUT INTOLERABLE?

by Peter M. Leslie

In Canada today, there are potent forces for change to which collective responses must be found. No one can doubt that there will be change; what is at issue is whether change occurs through the Canadian federal state or through two or more successor states. The choice of a political framework does not automatically determine the nature or thrust of the responses in question.

Reworking the Canadian constitution does not seem to be an option;

a new set of constitutional proposals either before or after a Quebec referendum is, therefore, unlikely. Quite simply, if there is to be a "new constitution," it will emerge only as a consequence of secession by Quebec. Secession would imply that the status quo, in the sense of the formal constitutional structure within which change takes place all the time, had been judged to be intolerable by those who had succeeded in breaking it asunder.

Whether or not the existing constitutional framework is intolerable or (from a Quebec perspective) is worse than breakup, is not for me to say. Those who find it intolerable—evidently a significant minority of Quebecers—are expressing a subjective view and all a non-Quebecker can do is to take note of it and work out how to react if that opinion ever does carry the day.

THE "STATUS QUO" AND THE FORCES FOR CHANGE

In the meantime, and for the indefinite future, publicly minded or politically involved Canadians may reasonably concentrate on changing

the status quo through the existing constitutional framework. "The status quo," in this context, must be taken to mean *inherited habits of governmental behaviour and the current thrust of policy*. It is clearly unworkable or unsustainable, given the forces for change.

These forces are by no means unique to Canada and are obvious to all:

- The consequences of past fiscal mismanagement or short-sightedness now require the federal government to spend more than a third of its revenues on servicing the accumulated debt. This clearly indicates a need for trimming government spending to a level that can be sustained at rates of taxation that are not intolerably high. This need has become a pressing one at the very time that demographic, economic, and technological factors (aging population, high unemployment, increasingly sophisticated and costly techniques of medical care) are imposing ever heavier obligations on government.
- There is also the need to adapt to the realities that are imposed by technology-driven changes in production techniques and by the now formidable industrial capacity of countries in Asia, Latin America, Eastern Europe, and elsewhere. Consequences include painfully high levels of "labour shedding" (to use the anodyne phrase of business-speak), the polarization of earnings, high and rising premiums on work skills, and, in the service sector, the rapid growth of both "good jobs" and "bad jobs"—the latter being characterized by low wages, short-term and unstable employment, an absence of fringe benefits, and extreme boredom.
- The degradation of the natural environment also points to the non-sustainability of current public policy and perhaps of current

levels or forms of production and consumption.

- The degradation of the social environment is probably no less severe than that of the natural environment. Social degradation is evident in growing economic, emotional, and physical insecurity throughout much of the world. Canada is better off than many other countries, but by no means immune.

Governments in Canada must cope with these and other problems in circumstances fundamentally conditioned by our proximity to the United States and the processes of continental economic integration. In the past, Canadians have made collective choices noticeably different from those made by the United States, and there is every reason to expect this tendency to continue, if we have any choice about it. Within Canada, too, there has been noticeable diversity and our federal system has accommodated such diversity to a considerable degree. But not enough for many Quebecers.

Those Quebecers who insist that federalism is not a workable system of government for Canada, or that the attitudes of Canadians outside Quebec have made it unworkable, seem to be saying two things. One is that, as a minority at the federal level, Quebecers have been unable to exercise sufficient influence in Ottawa to bring about the adoption of a minimally acceptable set of federal policies. The other is that, mainly as a consequence of this, the policy domain reserved to Quebec is too narrow. It is argued that most Quebecers would like to do things differently from the rest of Canada (ROC) and that the ROC stifles or disregards them. The logic of this, to the extent that mental calculations are relevant at all, is *indépendantisme*.

Implicit here is the belief that as an independent state, Quebec would be more effective in coping with the

forces of change or the problems resulting from past policies, than it is now, as part of the Canadian federal state. One may assume that Quebec could not, any more than the ROC, simply liberate itself from such problems or forces by the mere accession to independence. The aim, rather, is to gain greater room for manoeuvre in coping with them, consistently with the character of Quebec as a distinct society.

There is a partial analogy between the desire of *indépendantistes* to turn Quebec into a sovereign state and Canadians' desire to remain politically independent of the United States: we think of ourselves as a distinct people and we want our own values and preferences to be reflected in (and supported by) public policy. The Canada/US-Quebec/ROC analogy breaks down, however, when we consider the question of economic union. Few Canadians would contemplate full economic union with the United States essentially because they know it would render independence illusory. Paradoxically though, even the strongest Quebec *indépendantistes* not only want to preserve the existing Canadian economic union, they take it for granted that political independence will not disrupt economic arrangements. They expect to dismantle the political union, but to hold onto the economic one.

AN ECONOMIC, BUT NOT POLITICAL, UNION

The workability of an economic union—including its acceptability to the ROC—deserves careful scrutiny. To think about this, it is essential to recognize that the Canadian economic union comprises several elements. Each one points to the need for political decision—that is, choosing among policy alternatives that different groups will evaluate in different ways:

Continued, see "The Status Quo" on page 80.

- One element of the economic union is the customs union, a precondition for avoiding border controls between the provinces. Having a customs union means having a common trade policy (a single tariff schedule and a single system for imposing other import charges such as anti-dumping duties). As the GATT negotiations under the Uruguay round have clearly shown, not to mention the high-tension debates over the FTA and the NAFTA, setting trade policy involves deeply *political* decisions, especially now that trade agreements increasingly involve other matters such as investment. In fact, the decisions in question are quintessentially political. To make such decisions, a political mechanism—a solid institutional framework—is required.
- A second element of the Canadian economic union is a common market, meaning the free flow of capital, labour, goods, and services. Of course, some interprovincial barriers do exist, but their extent is limited by a 1994 agreement on internal trade and, long before this, by the federal power to regulate trade and commerce. The removal or control of internal barriers, in fact, requires substantial consistency of regulatory regimes among the participating states; that, indeed, is a lesson of the European Community's decision to remove internal frontiers in 1992. The Europeans found that to do this, it was necessary to create a stronger political framework reflected in treaty amendments in 1987 and 1992. New voting rules are now in place that enable the member states to reach common political decisions over a wide range of

matters by "qualified majority." This change even led Commission President Jacques Delors to say (unadvisedly) that, before long, about 80 percent of national legislation in the EC should be mandated by political decision at the Community level. The fact that he was exaggerating a little does not impair the general observation that to make a common market work, extensive political decision making at the centre is essential and the powers of the participating states must be significantly limited.

- A third and final element of the Canadian economic union is the monetary union. Canadians take it for granted, but it is possible to do so because the fiscal presence of the federal government (notwithstanding the deficit and the accumulated debt) is still considerable; Ottawa is extensively involved in interprovincial fiscal redistribution. In the absence of such mechanisms of adjustment—that is, if Quebec were to secede—there would have to be far-reaching controls on the fiscal and budgetary policies of the member states to make monetary union possible. This would be especially necessary considering that Quebec would have a public debt equal to more than 100 percent of its GDP. In fact, the need for budgetary controls is widely recognized in Europe as a precondition of creating a monetary union among some of the members of the European Union. This is exactly why countries like Britain and Denmark do not want to participate. Again, the pervasiveness of politics, or the necessity of far-reaching political decision, is evident.

So, what sort of institutional framework would be needed to sustain an economic union between an independent Quebec and the ROC? We are not talking only about Que-

bec as a member of an enlarged NAFTA. Presumably, Quebec's accession to a somewhat modified NAFTA could be accomplished without too much difficulty, although the terms demanded by the United States might not be entirely to Quebec's liking. But we're not talking about the NAFTA: we are focusing instead on full economic union along existing lines in Canada and how its governance could be assured. What arrangements would be workable?

None that I can think of.

Under any set of institutions that one might imagine, either Quebec would have equal weight with the ROC or it would not. The idea behind the 1980 sovereignty association formula was parity. This formula seems now to be emerging again, especially in the rhetoric of Bloc leader Lucien Bouchard, though he studiously avoids this discredited label. But whatever term is used, the concept of parity implies that Quebec would gain in the new institutions a voice equal to that of the other nine provinces (plus the territories) in today's Canada. It would gain a veto over a wide range of political decisions: all those required to make a customs union, a common market, and a monetary union work. This is a recipe for paralysis. It is also clearly unacceptable to the ROC.

The other possibility is proportionality, not parity. There would be weighted votes. But with only two entities voting, Quebec would lose out every time. Such an arrangement would certainly be workable, at least in a technical sense. The ROC would probably accept it. But from Quebec's perspective, would it be tolerable?

Peter M. Leslie is a Professor of Political Science at Queen's University.



ASSESSING THE OUTCOMES OF THE CURRENT CONSTITUTIONAL ROUNDS

by Peter H. Russell

In assessing the possible outcomes of a Quebec referendum on sovereignty, the critical question is whether the referendum will be followed by yet another Canadian effort at constitutional restructuring. Set out below is a matrix that displays four possible outcomes, each combining a "yes" or a "no" vote in the referendum followed either by a heavy round of constitutional negotiations or no such effort. What follows is an explanation of what would be most and least beneficial for all Canadians—including Quebecers.

THE BEST OUTCOME

A "no" majority followed by a return to incremental constitutional change. Fortunately this outcome, a win for the "no" side in the referendum followed by avoidance of the constitutional table, is also still the most likely outcome. This outcome would abort another round of macro constitutional politics. That, in a nutshell, is exactly why it is the best possible outcome.

To understand why this outcome is preferable, it is essential to grasp the challenging nature of efforts at macro constitutional change and the exceptional circumstances required for their success.

Macro constitutional politics is an effort to achieve a grand resolution of constitutional issues by a major restructuring of the written constitution. A generation of Canadians have been so engrossed in this kind of constitutional politics that they have come to think that this is the only possible means of constitutional change. Changing the constitutional status quo has come to mean "going to the table to cut a big deal."

The trouble with projects of macro constitutional change is that they

	No constitutional negotiations after referendum	Constitutional negotiations after referendum
Majority "no" in referendum	Best	Second worst
Majority "yes" in referendum	Worst	Second best

are apt to escalate into mega constitutional politics. *Macro* refers to the scale of the constitutional agenda; *mega* refers to the intensity of the public debate on constitutional issues. When constitutional politics reach the "mega" level, the constitutional question eclipses all other public issues and monopolizes the attention of the body politic. This will occur where the following three conditions hold: (1) the country attaches great importance to its written constitutional text; (2) the country has come to believe in a highly democratic constitutional process; and (3) the country is deeply divided on constitutional matters.

All three of these conditions now hold in Canada. Under these conditions, a successful resolution of the constitutional debate, especially when the constitutional amendment rules require unanimous agreement of all the parties, is virtually impossible, absent the most dire of straits.

As Canadians well know, these rounds of mega constitutional politics are exhausting, frustrating, and divisive. Recognition of that fact is the source of our "constitutional fatigue." Following a "no" victory, if we and our leaders have any sense, we will avoid macro constitutional politics like the plague.

Avoiding efforts to cut a big constitutional deal does not commit the country to the status quo. Indeed, there is no status quo in constitu-

tional life. The constitution is constantly changing and adapting. The choice is between relying on the normal, incremental process of constitutional change or trying our luck, once again, at big bang constitutional change. The normal process through which constitutional systems evolve and develop involves a combination of instruments including political practice, legislation and administrative arrangements, judicial decisions, and the occasional constitutional amendment.

Most of the time, constitutional democracies rely on the normal process of constitutional change. It is, indeed, the process that Canada relied on for the steady evolution of its constitution from Confederation until the late 1960s. Already, in the short span of two and a half years since the Charlottetown accord, our most recent big bang constitutional effort, went down to defeat, we have accomplished much through the normal, incremental process. These changes include:

- the establishment of Nunavut, self-governing region of the Arctic with an aboriginal majority;
- settlement of the Yukon land claim, with self-government for the Yukon Indians;
- political agreements to implement aboriginal self-government in many of the provinces;

Continued, see "Assessing the Outcomes" on page 82.

"Assessing the Outcomes,"
continued from page 57.

- a federal-provincial agreement on reducing barriers to internal free trade;
- Canada's participation in NAFTA;
- a reduction of the federal government's use of its spending power to influence provincial social and education policies;
- a constitutional amendment recognizing the bicultural nature of New Brunswick; and
- a constitutional amendment changing Prince Edward Island's terms of Union

Through these normal processes of constitutional adaptation, much could be done to give more policy room to Quebec and other provinces that wanted it and to make our federation operate more efficiently. However, what the normal process cannot deliver is symbolic gratification to Quebecers who aspire to the trappings of statehood or explicit redress of the injustice inflicted on Quebec in 1982 by amending the constitution in matters relating to its interests without its consent. If these symbolic objectives turn out to be important enough to Quebecers to risk the heavy transaction costs of realizing them, the "yes" side will win the referendum and my second best outcome will come into play.

THE SECOND BEST OUTCOME

Negotiating an agreement after the "yes" side wins the referendum. It may seem perverse for a committed Canadian federalist to prefer this outcome to a win for the no side followed by constitutional negotiations. But constitutional negotiations after a federalist win would be futile. (See "The Second Worst Outcome.")

It would be better to get down to negotiating sovereignty association with Quebec sooner rather than later, assuming that that is what a majority of Quebecers want. The PQ's draft bill gives up to a year to negotiate

the terms of Quebec's independence. With a very small "yes" majority—which is the most the sovereigntists can reasonably expect—they will be all the more inclined to negotiate. The question is: will the rest of Canada be willing and able to negotiate?

Its leaders might well agree to negotiate, though perhaps not right away. If the referendum question were too tricky or obscure to interpret a "yes" majority as a vote for sovereignty, the federal government might insist on another referendum or it might call a federal election to strengthen its negotiating mandate. If a second referendum did produce a sovereigntist win, the federal government would agree to convene and participate in constitutional negotiations with Quebec—even if the sovereigntist win was by a slight majority.

The consequences of refusing to negotiate would be too unattractive. A refusal by the federal government to negotiate would very likely induce the Quebec government to make a unilateral declaration of Quebec independence. Parizeau's only option would be another referendum to get a stronger mandate, which the federal government's refusal to negotiate would make all the easier to obtain. A unilateral declaration of independence would plunge the country into economic and communal chaos. Two regimes claiming sovereign authority over the same people and territory is a recipe for disaster.

To avoid such a disaster, both the Quebec and the Canadian governments should have a strong incentive to enter into negotiations following a sovereigntist win. These negotiations to be sure will be horrendously difficult. To begin with, there will be big questions about the table: who should be there and what should be on it?

Quebec might ask for—might even insist on—nation-to-nation

negotiations. But it would be wrong for the federal government to accede to such a demand. Quebec will have to respect the federal nature of Canada. The government of Canada has no mandate in law, politics, or principle to negotiate on its own the constitutional future of all the provinces other than Quebec or the aboriginal peoples. The constituent elements of Canada that share its sovereignty must all participate in restructuring their constitutional relationship to one another.

Alan Cairns, Patrick Monahan, and others have said that the rest of Canada is ill prepared for such negotiations. That is surely true. But it does not follow that the negotiations cannot produce an agreement. The difficulty of the negotiations cannot be discounted. The agenda will include the tough separation issues that we are all learning like a mantra—apportioning the debt, currency, citizenship, the sovereign claims of First Peoples, boundaries, the terms of Quebec's economic association with Canada, as well as the reconstitution of a Canadian federation without some or all of what is now Quebec. But tough as this agenda is, there is a fair prospect of reaching agreement on all of its major items.

There may be a better than even chance of negotiating an agreement in these circumstances because all concerned recognize that the alternative to not agreeing entails unacceptable risks. Under a dire-straits hypothesis, the possibility of resolving what would seem to be virtually unbridgeable constitutional differences increases significantly when the default condition—assuming that a resolution of the constitutional issue is not secured—is regarded by an overwhelming majority of those involved as utterly unacceptable.¹ This was the condition that induced white and black leaders in South Africa to reach an accord on the formation of a new fed-

eration: recognition that economic collapse and communal violence would be the result of a failure to reach an accommodation.

In the Canadian case, the consequences of a failure to negotiate will not be as dire as they would have been in South Africa. But they will be dire enough. All the time the negotiations are going on—indeed, from the moment a sovereigntist win is evident—the Canadian economy would be under tremendous pressure. Hotheads intent on arousing communal passions would not be lacking on each side. Under these circumstances, a year's time limit on the negotiations would be a blessed discipline. Even if everything were not settled at the end of a year, provided that progress was being made, the Quebec government would be unlikely to walk away from the table.

The product of an agreement reached under these circumstances would likely be quite a mess. It would certainly be a compromise containing elements that would be a hard sell both in Quebec and in the rest of Canada. As with previous constitutional "dog's breakfasts" negotiated by Canadian elites, this one, too, could encounter serious difficulties at the more democratic stage of ratification—whether by legislatures, referenda, or some combination thereof.

At this stage, anything is possible. It is even possible that the democratic ratifiers, holding their noses and anxious to bring the cursed constitutional thing to an end, would give it the necessary degree of approval. Alternatively, they may not, plunging us back into the maelstrom unless Quebec's constitutional agents provocateurs take a rest or lose their mandate. In which case we might live happily, if not ever after, at least for another year or two, which for Canadians would be a veritable eternity of constitutional peace.

THE SECOND WORST OUTCOME

Returning to the constitutional table after a win for the "no" side. Without the imminent threat of Quebec separation, Canada outside of Quebec would not have sufficient incentive to agree to constitutional changes satisfactory to Quebec. The effort to negotiate such a deal would simply end up in another distracting, energy-draining failure. Without a gun to our heads, there is no basis for a popular consensus on a constitutional restructuring of the Canadian federation.²

Though this outcome would be an unfortunate waste of time and effort, I still prefer it to that worst of all possible outcomes—a unilateral declaration of independence by Quebec. Spinning our wheels at the constitutional table would distract the country from dealing with pressing practical problems and would probably leave us more divided than ever. But not as many people would be as badly hurt as is likely to be the case if Quebec asserts its independence extra-constitutionally. It is better to be bored to death than scared to death.

THE WORST OUTCOME

The government of Quebec declares Quebec independence in effect before negotiating its terms. This outcome is the least likely. This is fortunate because unilateral declarations of independence (UDIs) are very dangerous enterprises. The danger arises from a possible breakdown of law and order. When a province of a federal state acts extra-constitutionally on a grand scale, it creates a climate of uncertainty. Citizens are not likely to agree on whose laws should be obeyed. The central government is put in the dilemma of either abandoning its constitutional responsibilities or using minimal force to protect them—such as protecting the rights of Canadian citizens, securing compliance with its laws, keeping its offices in the

province open, and maintaining its delivery of services. In this jittery climate of uncertainty, many people will leave the province and gobs of money will leave the country. I know of no happy experiences with UDI. Chechnya is just the most recent tragic example.

In such situations, most of those who get hurt, badly hurt, have little interest in constitutional affairs. They are the economically most vulnerable who have no place to go and no wealth to move. These people, in a UDI, literally will not know what hit them. This is grossly unfair. If it were for some great cause—to end a terrible oppression—then the end might justify the means. Only the most fanatic Quebec sovereigntist could think that their cause justifies such means. Hopefully, it is not naive to believe there are few such fanatics in the leadership of the Parti québécois.

1 See my paper "Canada's Mega Constitutional Politics in Comparative Perspective," presented at the World Congress of the International Political Science Association, Berlin, August 21-25, 1994.

2 See Michael Lusztig, "Constitutional Paralysis: Why Canadian Constitutional Initiatives Are Doomed To Fail" (1994), *Canadian Journal of Political Science* 747.

Peter H. Russell is a Professor of Political Science, University of Toronto.

SOME CONSEQUENCES OF A "NO" VOTE

by Alain Noël

When they voted "no" in 1980, Quebecers did not simply deny the Lévesque government a mandate to negotiate sovereignty association, they also created the conditions that made possible the constitutional reforms of 1982. These reforms were not demanded by Quebecers and are still considered illegitimate, even by the unambiguously federalist leader of the "no" forces in Quebec, Daniel Johnson. The 1980 vote also signalled the end of a reformist political era in Quebec and the beginning of a period marked by individualism, conservative politics, and rising income inequalities.

The situation in 1995 is quite different. First, the referendum on the Charlottetown accord left Canada with a constitutional stalemate. Fundamental transformations comparable to what was achieved by Pierre Elliott Trudeau in 1982 are now inconceivable and Prime Minister Jean Chrétien can be trusted when he stresses that he was elected not to talk about the constitution. Second, in Ottawa and in the provinces, the politics of state and province building have given way to the politics of deficit and debt reduction, a shift that, like the constitutional situation, makes ambitious reforms unlikely. Third, the stronger than ever global market forces and the new international politics of competitiveness also tend to reduce the range of policy options and, as a consequence, appear to limit the prospects for major change.

A DIFFERENT STATUS QUO?

The difficulty of undertaking major reforms does not mean, however, that nothing can happen. If Quebecers vote "no," there may

not be a constitutional big bang transforming the country, but much will change. Sovereignists are wrong to equate a "no" vote with the status quo or to claim, as Lise Bissonnette did in a recent editorial, that federalists have nothing to offer, no positive vision worth discussing. When advocates of the "no" side insist on the flexible character of Canadian federalism, on the evolving nature of the status quo, or on the workability of administrative arrangements, they speak the truth. If they succeed, the end result of their actions will be, indeed, a different status quo. Following a "no" victory in a referendum on sovereignty, what Quebecers call a *projet de société* will gradually unfold: it will be a Canadian *projet de société*, built on the current constitutional stalemate and rooted in the new conception of Canadian citizenship that emerged in the 1980s; and, of course, it will be very different from what those in Quebec who talk of a *projet de société* are demanding.

A SOLIDARISTIC VISION FOR THE FUTURE?

Writing about the welfare state a few years ago, Canadian sociologist John Myles stressed its resilience in the face of forceful but ineffective political attacks. Far from being dismantled, the welfare state survived in the 1980s more or less in the same form it had taken in the reformist 1960s and 1970s. At the same time, Myles noted, social policy appeared "dead"; there were no clear visions between "an exhausted (liberal) social policy paradigm and a utopian (conservative) one." Still vague when Myles wrote in the mid-1980s, such visions have now clearly

emerged. In advanced capitalist democracies, a major conflict is, in fact, developing over social policy reform. This conflict involves two basic alternatives. On the one hand, there is a liberal strategy whereby high unemployment, precarious job security, and income polarization are accepted as unavoidable and force a redrawing of social programs to better fit the new situation. On the other hand, one finds what could be called a corporatist or social democratic strategy, where the deterioration of incomes and jobs is resisted and where welfare and labour market programs are used to maintain and possibly redefine solidarity. Of course, there are as many variants as there are countries (and even more if one considers regions), but a fundamental difference remains between the basic vision of a country like Great Britain, where the prime minister could state "there is no such thing as a society," and that of countries still committed to income redistribution, high levels of employment, and universal social programs.

Traditionally, Canada has stood near the centre of this continuum with a liberal welfare state that integrated some universalist elements—for instance, health care. Under pressure, however, a drift toward the liberal end of the spectrum seems likely. This drift is rather natural for a welfare state that is primarily liberal, and it can already be read in the documents on social policy reforms issued by the Liberal government in 1994 and 1995, where unemployment tends to be associated with social program dependency or other individual failings. Most important, such a drift appears hard to resist in this country because in the post-Meech, post-Charlottetown Canada, "there is no such thing as a society."

In the United States, writes Pierre Rosanvallon in a recent book on the welfare state, the central figure of

social policy is the victim. Unable to make gains through the political process, individuals and groups seek redress through the courts. There, they define themselves, not as citizens committed to some shared standard of living, but instead as victims capable of staking their claims in court. In parallel, social and labour market policies are thought of less in terms of labour market and broad adjustment problems than in terms of individual deficiencies and incentives. Again, as the focus is on the fate and behaviour of victims, Canada's constitutional deadlock pushes us in the same direction. Unable to define and recognize the basic communities around which solidarity could be built, Canadians are increasingly seeking solutions through the pursuit of specific interests, in the courts or in the political arena. "Whether it be provinces, women, Aborigines or the disabled, all can now be treated as groups seeking the protection of the Charter for their own group interests," writes political scientist Michael M. Atkinson in a recent discussion of Canadian democracy;

"rights are means of obtaining or furthering these interests to establish relatively weak bonds of association."

My point is not that the Charter is wrong and should be discarded, but rather that it is insufficient as a foundation for political community. We are told, observes sociologist Fernand Dumont in his book *Raisons communes*, that the constitution is not important. It remains, Dumont rightly points out, our fundamental social contract. If even such a contract does not matter, how can citizens put faith in politics as a means of doing things collectively and of promoting solidarity?

Quebec, like Canada, has a liberal institutional and political heritage, and whether or not it remains within Canada, it will have to struggle to define its own version of a generous welfare state for the 1990s. Nothing in this respect is guaranteed. Insofar as it understands itself as a political community united by more than individual and group rights, however, Quebec would at least have the possibility of adopt-

ing such a solidaristic vision for the coming years, and so could Canada without Quebec, which would thus be confronted with the necessity of rethinking its own status as a nation. Such a possibility would, to some, be destroyed by a "no" vote in 1995 because a "no" vote would also be the defeat of the left in Quebec. It would announce the definitive triumph of the "evolving status quo," of a "flexible federalism" that cannot amend itself and cannot even acknowledge the obvious existence of political communities within Canada. In the social policy documents prepared by the federal government in 1994 and 1995, the provinces in general, and Quebec in particular, are hardly ever mentioned. In the aftermath of a "no" vote, Quebec, along with the rest of Canada, is likely to drift toward the liberal model and gradually forget the values of solidarity that in the past many saw as a core component of Canadian identity.

Alain Noël is an Assistant Professor in the Département de science politique, Université de Montréal. 🍁

THE REFERENDUM DEBATE AND THE ABORIGINAL QUESTION IN QUEBEC

by Daniel Salée

In a recent *Maclean's* article, the grand chief of the Quebec Crees, Matthew Coon Come, is quoted as saying: "Quebec secession is a major threat to our status and our rights. The draft bill for sovereignty amounts to unilateral abrogation of aboriginal rights as defined under the Canadian Constitution as well as in numerous previous treaties and agreements in particular the James Bay and Northern Quebec agreement." In the same article, David Cliche, PQ spokesman for the gov-

ernment on aboriginal rights, gives a somewhat arrogant response: "I'm offering them a chance to get on board. The train's coming whether they like it or not."

Since the Oka crisis, the relationship between aboriginal nations and the Quebec government has been strained, to say the least. Oka, the Great Whale project in Northern Quebec, endless, arduous, and seemingly fruitless negotiations over land claims, and the oft-repeated, adamant unwillingness of Quebec's

First Nations to support the current government's drive for sovereignty are but some of the milestones of a political face-off that, in the last five years, seems to have gone from bad to worse.

On the sovereignty issue, Quebec's First Nations and the government are at loggerheads with each other. Land claims are a major stumbling block. Most aboriginal nations want to see their inherent right over ancestral lands respected, and ultimately seek separate boundaries. Until now, however, no Quebec government has been willing to entertain the thought of totally

Continued, see "The Aboriginal Question in Quebec" on page 86.

"The Aboriginal Question in Quebec," continued from page 85.

autonomous, geographically separate territories for aboriginals. Like its predecessors, the PQ government insists that the Quebec borders as currently designed are invidious and not open for negotiation.

A POLITICS OF COMPETING IDENTITIES

This state of affairs should come as no surprise. Aboriginal claims and their characteristic ethno-nationalist undertones are totally in line with the particularistic and heterogenic logic of the contemporary political dynamic of liberal societies. That Aboriginal nations seem more vocal and more ready to stand up for their rights is but a function of the democratic gains made in recent years. Minority groups have learned and, indeed, are encouraged to struggle, for a space of their own in societies that have all too often been impervious to their plight. To a hegemonic majority, the claims of minority groups may often seem like a thorn in its side; instead, these claims should be seen as the healthy sign of the enlargement of the democratic sphere—a fact in which everyone should rejoice.

In recent years, representatives of the Quebec government have proudly and readily flaunted Quebec's record of democratic achievement regarding the aboriginal question: twice, through a cabinet decision in 1983, and through a National Assembly resolution in 1985, the Quebec state has recognized the existence of aboriginal communities in Quebec as distinct nations with the right to the preservation of their own language, culture, and traditions; it even acknowledged their right to control and own land. Such recognition is too fundamental to be made of empty words and inevitably creates high expectations. In the

light of these expectations that are of the Quebec state's own making, Quebecers should not be surprised that First Nations today are claiming the attributes of nationhood: land with clear boundaries, control over the management of self-determined, social, economic and political priorities, and hence full, unconditional, no-strings-attached self-government—indeed, all attributes that large numbers of Quebecers are claiming for themselves.

The aboriginal question in Quebec is unfolding much to the dismay of sovereigntists: the affirmation of Quebec identity and the foundation of their political and administrative claims are in many ways negated by the identity aspirations of First Nations. From the Quebec government's particular vantage point, aboriginals are claiming a political space to which, in the current political logic of things, the Quebec state could hardly consent. Doing so would jeopardize the political and institutional substratum necessary to realize the national aspirations of Quebecers, and the foundations on which Quebec's identity and sense of nationhood have been resting for over 30 years.

Clearly, First Nations and Quebecers, particularly through the land claims issue, are after the same political space—a space that each group deems essential to the full realization of its identity. Yet, demographic weight should work to no avail for Quebecers. To invoke some superior claim on the polity or hierarchy of rights would run counter to the current democratic ethic. Everyone, every subject, is on the same footing, whether or not they belong to a minority group. Morally, then, aboriginal claims are wholly legitimate for they are in line with the emerging and unchallengeable discourse favouring respect for difference, the recognition

of particular identities, and demands for the means of successfully expressing difference.

THE DOUBLE BIND OF DIFFERENCE AND COMMUNITY

In a way, Quebecers may well find themselves trapped in the very democratic space within which they have located their polity. As the democratization process of the last three decades has contributed to their own sociopolitical advancement, the liberal-democratic logic to which they unequivocally adhere forces them today to water down their hegemonic pretensions to accommodate otherness and minority identity claims. Hence, with respect to the aboriginal question, Quebecers are caught in a double bind: either they consent to all the claims of First Nations and risk altering the foundations on which their own national existence and identity rest; or they resist, they continue to stake their claims and impose their own historical vision of what Quebec ought to be, at the risk of seeming illiberal, anti-democratic, and even racist.

The aboriginal question is a test directly aimed at Quebecers and Quebec society and will force a decision whether or how far to accommodate difference and otherness. It also tests the viability of the liberal-democratic paradigm: is it possible to promote singular subjectivities and the individual's right to difference, and also construct a political community beyond particular identities, around a conception of community shared by everyone—which is essentially what Quebec sovereigntists are trying to do?

It is unclear whether Quebec can pass this dual test. To be true to the discourse of difference recognition that sovereigntists officially claim to support, they would have to offer aboriginals the full panoply of the means of self-determination, includ-

ing political sovereignty for the First Nations who choose such a path (the Mohawks and the Crees are likely candidates). Such generosity is highly improbable: the government would never budge on the issue of territorial integrity and the reports of the regional commissions on sovereignty show that the population fully supports that stance.

But more important, the very nature of the Quebec state is not conducive to this kind of "compromise." Quebec is a liberal state. The sovereigntist project is essentially inspired by liberal principles and seeks nothing less than the establishment of a liberal, neo-Jacobine state. Admittedly, such a state can be committed to the protection or promotion of minority identities, but only so long as they willingly fit within a homogenizing, historically loaded, civic culture. Beyond this horizon, the liberal state is no longer available to guarantee the protection or promotion of minority identities, all the more so if they manifest themselves through ethno-nationalist expressions that are not those of the general public culture.

As long as we persist in looking for solutions within the liberal-democratic paradigm, the aboriginal question in Quebec will only continue to fester. Whether Quebec sovereignty ever becomes a reality or not, the aboriginal question stands as a reminder of the inherent limitations of a universalistic sociopolitical project. Today, Quebec is in the throes of a politics of competing identities. It is a game Quebecers know well and at which they are quite adept, but they are no longer playing it alone.

Daniel Salée is Vice Principal, School of Community and Public Affairs, Concordia University, Sir George Williams Campus, Montreal.



QUEBEC VERSUS ABORIGINAL RIGHTS TO SELF-DETERMINATION

by Reg Whitaker

Amid the various scenarios surrounding a "yes" vote in the Quebec referendum, there is one that stands out in its potential for conflict: the claim by aboriginal people that they have the right to opt out of an independent Quebec. In the aftermath of a "yes" vote, the aboriginal issue will be front and centre. It is about time for recognition of the aboriginal peoples' national rights. Yet, in this conjuncture, the danger is that aboriginal rights will be cynically manipulated as a kind of club with which to intimidate Quebec sovereigntists. This is a disservice to aboriginal peoples, which also opens the door to potential violence that will be to no one's advantage, whether Canadian, Québécois, or native.

NATIONAL SELF-DETERMINATION: STATES VERSUS PEOPLES

One proposition that has gained some currency in the rest of Canada is that while Quebec, given a clear decision on a clear question, has the "right" to separate, the borders of an independent Quebec are negotiable. And native claims are the key to the borders question because they are expressed in the same language as the separatists' aspirations. These claims are often seen, both by Quebec and by aboriginal spokespersons, as contradictory, antagonistic, and incommensurate. Why should this be so?

There might be some broad consensus that claims to national self-determination have plausibility when the following conditions hold:

- 1) a people have developed clear self-consciousness of themselves as a distinct nation and

- 1a) could potentially form a viable nation-state;
- 2) their identities as members of this nation cannot be realized in their present political and economic conditions of citizenship, because:
- 3) another dominant group has imposed a state structure upon them that expressly denies their identity and/or actively seeks to repress it.

Quebec clearly answers to condition (1), but the argument fails at stages (2) and (3). Aboriginal claims are somewhat weak with regard to (1a), but are much stronger with regard to (2) and (3). We might summarize the differences in this way: aboriginal people have much stronger *moral* claims than the Québécois, but the latter have vastly greater political and economic power and capacity. Quebec's claims are taken seriously because the rest of Canada knows that Quebec could assume sovereign status, given the will of the Quebec people to take the risks associated with such a step.

Quebec's potential power does not diminish the political significance, and certainly not the moral weight, of aboriginal as against Québécois claims for self-determination. To privilege Quebec claims would be to assert that states, or potential *states*, are privileged over *peoples*. If aboriginal peoples cannot, for practical reasons, look to independent national statehood as a viable option, this consideration does not in any way weaken the claim to self-determination.

Continued, see "Aboriginal Rights to Self-Determination" on page 88.

"Aboriginal Rights to Self-Determination," continued from page 87.

Nor are Quebec aboriginals lacking in real, measurable, political power. Although there are not that many Cree in northern Quebec (some 12,000), they far outnumber non-native Quebecers on the ground—a ground, moreover, that includes James Bay hydro, an element of Quebec's economic viability. The same Cree have already demonstrated their ability to undermine Quebec's freedom of action on the international stage by appealing successfully to foreign opinion, even forcing the cancellation of the James Bay II mega-project. If they remain determined, they can certainly throw a large wrench into the PQ's sovereignty project. The spectre of Oka should serve as a reminder of what other Quebec aboriginal people can do.

The PQ has tried to placate Aboriginal people by promising them fair and equitable treatment as minorities within a independent Quebec that will be genuinely pluralistic. This misses the point. Aboriginal claims are *national* and not *minoritarian*, and cannot be met by "trust us" assurances.

MORALITY AND POWER POLITICS

Of course, when political debate is couched in the language of rights, there is always a tendency to argue rights as trumps. On closer examination, the language of the right to national self-determination contains two kinds of claims: moral claims derived from a conception of natural justice, and power-political claims derived from a conception of what is possible or realizable. Quebec's right to national self-determination is relatively strongly based on the latter kind of claim, and the aboriginal right to national self-

determination is more strongly based on the former.

It is important to recognize that each contains an admixture of both sorts of claims, in a shifting balance. Morality does not rest with the aboriginals alone. Quebec's claims are not purely power-political. It is above all the legitimacy of a democratic mandate for sovereignty that would give Quebec, following a successful referendum on sovereignty, the power to realize a separate nation state. A democratic mandate is a political form of a moral claim, different from a moral claim based on historic injustice, but powerful nonetheless.

"Borders must be rendered irrelevant to the question of aboriginal self-government. A joint constitutional protocol would set the question of Quebec sovereignty aside from the aboriginal question."

Refusal by Quebec to recognize the claims of the Aboriginal peoples would not be merely morally obtuse—it would be politically stupid. Whatever the response of the Canadian government to a plea by the Cree for intervention, the uncertainty and risk that such a scenario would pose for the economic climate for an independent Quebec would be disastrous. On the other hand, whatever provocations have been posed by the arrogance of Quebec nationalists toward their rights, the aboriginal peoples should not shut their eyes to the moral core of the Quebec claim. To assert in advance that the legitimacy of the democratically expressed will of the Quebec people for national self-determination is of lesser dignity and significance than the equivalent will of the aboriginal peoples is hardly helpful.

BOUNDARIES AND ETHNIC SELF-DETERMINATION

Some English Canadians have already shown an alarming tendency to project aggressive assertions about shrinking Quebec borders following independence, which are sometimes, although not always, couched in terms of democratic self-determination for minorities. Despite the superficial attraction of a "democratic" opt-out option for minorities, once borders are placed on the table, the secession process becomes inherently unstable and volatile.

The problem is that redrawing boundaries to accommodate some concept of minority ethnic self-determination opens the door to a process that cannot easily be controlled. If, for instance, the anglophones of the Eastern Townships opt to withdraw those parts of Quebec where they form local majorities, what is to prevent the Acadians of northern New Brunswick from opting for inclusion within Quebec? Are we not soon talking of population transfers? How long can such a process remain voluntary, and how soon will it begin to take on compulsory features? "Ethnic cleansing," after all, is an attempt to sanctify redrawing of boundaries on ethnically exclusivist lines by forcibly redrawing the human geography. Clearly, no one in the Canadian debate wants to see ethnic cleansing. There is an underlying *logic* that seems to drive events from redrawing boundaries to an exercise that looks very much like ethnic cleansing, even if such an outcome was never sought by any of the parties.

If Quebec does intend to move toward sovereignty, there must be negotiations that precede rather than follow the achievement of sovereignty. These negotiations would have to be three-way, involving Quebec, the rest of Canada, and aboriginal groups both within and

outside Quebec. They would look to a joint protocol, agreed upon by both Quebec and Canada, recognizing the same constitutional rights of aboriginal self-government and self-determination on both territories. There are possible variations on this process: a "best offer" approach along labour negotiation lines might be one. Another would be a solemn declaration by Quebec to match any Aboriginal rights recognized in the rest of Canada. (The latter is not so farfetched, given that the PQ has already declared its intention to use the Canadian dollar, thus abrogating any power over monetary policy.)

Borders must be rendered irrelevant to the question of aboriginal self-government. A joint constitutional protocol would set the question of Quebec sovereignty aside from the aboriginal question. Negotiating such a joint protocol broadly acceptable to Quebec and Canada as well as to all the key aboriginal parties would be a very complex and difficult process, especially in the volatile context of the secession of Quebec and the inevitable redrawing of relations within Canada between the regions and provinces. Yet, however difficult, it may be the only way to avoid a potentially fatal nexus of conflicting rights claims.

Reg Whitaker is a Professor of Political Science at York University.



WHERE ARE THE ETHNIC COMMUNITIES IN THE DEBATE?

by Marie McAndrew

Where will the ethnic vote go in the '95 referendum? The answers of various ethnocultural organizations offer a range of possibilities, but few to comfort the PQ.

Ethnocultural organizations appeared before the Montreal Commission régionale sur l'Avenir du Québec. The briefs of these organizations demonstrated a basic cleavage between the so-called pre-1977 (that is, Jewish, Italian, Portuguese, and Greek) communities and post-1977 (that is, Haitian, Southeast Asian, South American, and Lebanese) communities. The cleavage is not of a "no/yes" variety. It reflects, rather, a range of perspectives about arguments for and against Quebec independence.

The briefs from pre-1977 communities usually come from larger umbrella organizations, seemingly representative of a wide percentage of the community. They almost unanimously reject the PQ project and sometimes question the legitimacy of the consultation using "classical" non-ethnic federalist arguments. These concerns overshadow any stated fear of Quebec nationalism, despite the focus placed on this issue by the media. Only a minority of individuals who have integrated into the French milieu, such as writer Marco Micone, or an alternative leadership, more "to the left," support the PQ project.

The briefs from post-1977 communities present much more variety, both in terms of the type of organization involved and their contents. These organizations ac-

knowledge the divisions in their communities, but also support the PQ project in some cases. They unanimously declare that the consultation is a testimony to the democratic nature of Quebec society. Some of these briefs take a clear

"The communities that have integrated into the anglophone milieu have been socialized to adopt a position on Quebec's future that resembles closely that of the anglophone community ... [whereas] the newly arrived are more integrated into the French milieu and react warily, as any first-generation immigrant would, in a country divided by a conflict over political loyalty."

"no" or a clear "yes" position, generally depending on their interpretation of the impact of independence on the future of ethnic relations in Quebec. Thus, the "insecurity theme" of some ("the state of confusion following independence would be favourable to more intolerance and scapegoating of immigrants") is opposed to the "security thesis" of others ("when the francophones are secure, a pluralistic Quebec, already in development, will be more easily fostered"). But the majority adopts a

Continued, see "Ethnic Communities" on page 90.

"Ethnic Communities,"
continued from page 89.

more attentive stand that could be summarized as follows: "Do what you want. After all, we have just arrived, but whether in a Canadian or an independent Quebec, these are our concerns." The list that then follows generally includes an official recognition of the pluralistic or multicultural nature of Quebec society and a request for better governmental support of economic equality and anti-racism. The exception to this trend comes from anglophone immigrant communities (such as the Jamaican or Pakistani) who support federalism, like most pre-1977 communities.

THE POVERTY OF THE ETHNIC EQUATION

From this brief analysis of the positions taken at the Montreal commission, it appears that the political behaviour of ethnic communities in Quebec is largely influenced by socio-historical factors. The communities that have integrated into the anglophone milieu have been socialized to adopt a position on Quebec's future that resembles closely that of the anglophone community. On the other hand, the newly arrived are more integrated into the French milieu and react warily, as any first-generation immigrant would, in a country divided by a conflict over political loyalty. A minority that have already developed a more significant link with the host society seem to be more ready to accept the vision proposed by the PQ government. Because the francophones themselves are divided on this issue, this latter trend is limited.

The complexity of the positions outlined here show the poverty of

the equation "Quebec nationalism = Ethnic nationalism" that is popular in English Canada. The extent to which Quebec nationalism, as any other, is the product both of a civic inclusive project and of historical factors that highlight ethnic origin is certainly an interesting question. So would be a comparative analysis of the debates raging

"To convince newcomers who lack a sense of Quebec's history to become part of an adventurous project, the PQ needs to ... convince them that an independent Quebec would fare better than Canada."

in English Canada and other countries about how much pluralism and how much unity is desirable in a democratic society. We need to go beyond the reduction of "Quebec nationalism = Ethnic nationalism" if any relevant explanation is to be sought. The equation is a mere ritual crutch for English Canada.

A MORE INNOVATIVE DISCOURSE

If, to convince the ethnic communities to vote "yes," the PQ government had only to prove to them that an independent Quebec would fare as well (or as poorly, depending on one's perspective) as Canada in matters relating to civic nationalism, tolerance, and equality, the task would be relatively easy. But to convince newcomers who lack a sense of Quebec's history to become part of an adventurous project, the PQ needs to do much more. It should convince them that an independent Quebec would fare *better* than Canada. This case has not been made, either because this is an almost impossible task or be-

cause today's PQ is not interested, as it was in the progressive 1977 referendum. To convince the ethnic voters that independence is desirable, a more innovative discourse is required.

Professor Marie McAndrew is the Associate Director, Center for Ethnic Studies, Université de Montréal.



Canada Watch welcomes submissions on issues of current national interest. Submissions should be a maximum of 1,000 words.

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

DID THE QUEBEC GOVERNMENT'S STRATEGY FAIL DURING THE PRE-REFERENDUM CAMPAIGN?

by Guy Lachapelle

Since the December 5 announcement of the Quebec government's strategy and the proposed question that asks Quebecers to endorse a draft bill declaring Quebec's sovereignty, support for sovereignty has remained relatively constant at around 40 percent among all Quebecers. However, the questions asked by the polling firms differ so widely that the picture is blurred; since the early 1980s, the sovereignty association option has been the most favoured option of Quebecers. Is such a partnership feasible?

The debate over the last four months has left many Quebecers torn between different scenarios. It is problematic that clear answers have not been given by either the federalist or the sovereigntist camps. It is evident that sovereignty means different things to Quebecers. As a result, the final outcome will depend on how the Parti québécois strategy evolves and how sovereignty is presented. Sovereignty means independence—every Quebecer knows that. But there are several ways of achieving it and, contrary to 1980, the Quebec government has left all the doors open with its draft bill to modify the question and the process. Quebecers, asked about the proposed question in the draft bill, would be unable to quote its wording; the one thing they know is that it concerns Quebec sovereignty.

All this said, it is obvious that the government's optimal strategy was to call a referendum this spring. Jacques Parizeau always thought, even after the election of the Parti

québécois in 1976, that the PQ should have followed Pierre Bourgault's advice by holding a referendum as quickly as possible in the first months after its election. René Lévesque had a different agenda and was convinced that by showing Quebecers that his government could be more than a good government, the referendum would be won without any difficulty. We know the rest of the story, but the most important point is that the option of the Parti québécois was much higher in the polls between January and April 1980 than the sovereignty option of Jacques Parizeau is today. The magic number for the Quebec government is 62.5 percent support among francophones. But to be really sure of winning the referendum, it will need a margin of 5 percent—that is, 67.5 percent among francophones.

Nonetheless, the pre-referendum campaign has attained one of its major objectives: clarifying what Quebecers want. Almost two-thirds of Quebecers are opposed to seeing the Quebec government hold the same powers as today; 35 percent would like to see more powers for Quebec inside the Canadian federation; 33 percent prefer a form of sovereignty association; and 7 percent are strong independentists. If the Quebec government proposed to voters "the traditional Quebec demands" (that is, from the Tremblay commission in 1956 to the Allaire report of the Liberal party and the Bélanger-Campeau commission), the likelihood of losing such a referendum would be less problematic. More important, it would represent the first time in Quebec's history

that such a position was endorsed by a majority of Quebecers.

The central question is whether Jacques Parizeau is able to recognize the necessity of postponing his referendum on sovereignty. The answer should be yes, for two reasons. First, the level of satisfaction with the Quebec government remains high. On average, 54.7 percent of all Quebecers are very satisfied with the Parizeau government, only 29.3 percent are dissatisfied, and 16 percent have no opinion. The second important element is that Quebecers are ready today to reelect the Parti québécois. If they had this opportunity, the Parti québécois would get around 42.3 percent of the vote as opposed to 24.3 for the Quebec Liberal party (PLQ), a difference of 17.4 points. The most troubling development for the provincial Liberal party is the erosion of its popular support among francophone voters who now favour the Parti action démocratique (ADQ) of Mario Dumont. The Léger et Léger poll of January indicated that the ADQ was leading with 18.6 percent against 17.6 for the PLQ among francophones. This is the first time in modern provincial political history that the Quebec Liberal party has slipped so low.

Several factors can explain the difficult situation of the Quebec Liberal party. First, the PLQ refused to participate in the Regional Commission on Sovereignty, leaving the floor to Mario Dumont and his supporters. Second, the party of Daniel Johnson has no constitutional platform that can differentiate this party from the federal Liberal party. Even if the leader of the Quebec Liberal party does not like to hear that the status quo means that Quebec will become a province like the others,

Continued, see "Quebec's Pre-Referendum Strategy" on page 92.

“Quebec’s Pre-Referendum Strategy,” continued from page 91.

his answer to this more centralist viewpoint has not been clearly explained. Even if we know that he prefers to say that a “no” vote will set the table for more administrative agreements between Ottawa and Quebec, the constitutional stance of his party remains obscure. The CBC-CROP poll indicated that 51 percent of Quebecers agree that the status quo is preferable to sovereignty even if the same 51 percent judge that a “no” vote will put the Quebec government in a difficult situation.

The overall pre-referendum campaign has indicated clearly to the Quebec government what to do if it wants a “yes” vote from Quebecers. From this point of view, the sovereignty issue can be put on the back burner for a few years, which is the time needed to reduce the transition costs. More important, a referendum on a new partnership offered by the Quebec government, the ADQ, and a vote by the majority of Quebecers can have an important effect and create the necessary climate for a step forward. If Ottawa and the provinces refuse such an agreement, the Quebec government will have all the legitimacy to push further its sovereignty project. More importantly, it is essential for the Quebec government to demonstrate its ability to understand Quebecers’ ambiguities. Quebecers’ interests should be above party interests.

Guy Lachapelle is a Professor of Political Science at Concordia University.



Trend of Opinions in Quebec Relative to Sovereignty Since the Election of September 12, 1994

Year	Source of data	All Adult Quebec Citizens (Francophones Only)			Number
		In favour	Opposed	Undecided	
1994 ¹	Léger et Léger/ November 17-22	35.4 (41.2)	42.1 (35.3)	22.5 (23.5)	1005 (N/A)
1994 ²	SOM/ December	32.0 (37.0)	44.0 (37.0)	24.0 (26.0)	1022 (N/A)
1994 ³	Léger et Léger/ December 9-14	37.0 (45.0)	46.0 (37.0)	17.0 (18.0)	1010 (N/A)
1994	Léger et Léger/ December	41.5 (49.0)	46.1 (39.0)	12.4 (12.0)	603 500
1994 ⁴	Angus Reid/ December 17-21	39.0 (N/A)	51.0 (N/A)	10.0 (N/A)	401 (N/A)
1994 ⁵	CROP/ January 5-9	49.0 (N/A)	51.0 (N/A)	N/A (N/A)	624 (N/A)
1995 ⁶	Créatec +/CROP/ SOM/January 11-19	37.0 (42.0)	43.0 (37.0)	20.0 (21.0)	10011 8905
1995	Léger et Léger/ January 19-23	40.6 (47.3)	46.0 (38.6)	13.4 (14.1)	1001 835
1995 ⁷	CROP-Environics/ February 2-8	38.0 (48.0)	57.0 (52.0)	5.0 (N/A)	764 656
1995	Angus Reid/ February 15-20	42.0 (N/A)	54.0 (N/A)	5.0 (N/A)	385 (N/A)
1995	Léger et Léger/ February 21	44.4 (N/A)	55.6 (N/A)	N/A (N/A)	N/A (N/A)
1995	Léger et Léger/ March 16-22	44.8 (44.0)	55.2 (37.0)	N/A (19.0)	1005 (N/A)
Average for the 9 surveys with undecided:		38.0 (43.6)	47.7 (37.3)	14.3 (19.1)	
Since January 1st:		39.4 (44.4)	50.0 (37.5)	10.9 (18.1)	

N/A: Not available

Questions: (In English if available)

- 1 Si un référendum avait lieu aujourd’hui, voteriez-vous POUR ou CONTRE la souveraineté du Québec?
- 2 Êtes-vous tout à fait d’accord, assez d’accord, assez en désaccord ou tout à fait en désaccord avec le projet de souveraineté tel qu’il est décrit dans l’avant-projet de la loi sur la souveraineté du Québec?
- 3 If a referendum was held today, would you answer “yes” or “no” to the question: “Are you in favour of the act passed by the National Assembly declaring the sovereignty of Quebec?”
- 4 Based on how you feel right now, will you vote “yes” or “no” in the upcoming referendum on Québec sovereignty?
- 5 Si le référendum sur le projet de loi sur la souveraineté avait lieu aujourd’hui, voteriez-vous oui ou non à une proposition visant à faire du Québec un pay souverain ne faisant plus partie du Canada?
- 6 À la question suivante: «Êtes-vous en faveur de la loi adoptée par l’Assemblée Nationale déclarant la souveraineté du Québec?» Voteriez-vous OUI ou voteriez-vous NON?
- 7 Are you in favour of the bill adopted by the National Assembly declaring the sovereignty of Quebec?

REFERENDUM '95: THE MEDIA'S SPECIAL ROLE AND RESPONSIBILITY

by Michel Vastel

There is no election or referendum that is not invariably accompanied by seminars on the role of the media. In this case, some of the questions that are being asked before the event: do the media have a special role to play and have they played that role responsibly? Those questions can be posed in a way that contributes to another important aspect of the referendum debate: can the media allow both Canada and Quebec to win? Three elements will be discussed:

- What are the "media" in issue?
- Why is their role "special"?
- What does "responsibly" mean in the circumstances?

THE MEDIA

If Quebecers are somewhat puzzled by English-Canadian leaders remaining silent in the present debate, this is certainly not the case for the "English media." They are participating—and in a very provocative way! One could quote the very respectable *Financial Post* suggesting that the Parti québécois leader Jacques Parizeau "and his bunch of highwaymen should be deposed and arrested." Or Peter C. Newman in *Maclean's* asking, "Is gunboat diplomacy the way to fight the PQ?" This is pretty heavy stuff. Why do some English-Canadian commentators have such an attitude? Very simple. As one of them put it to me: "They have a country to save!" They have a monolithic view of the issue. They do not even ask about the merits of one side or the other. Only one side is right or legitimate: theirs. So, contrary to the political leaders in the rest of the country, the English media have decided to be active players in this

debate. And their participation has an impact on Quebec because French journalists read them and report about them. As a result, the so-called Quebec media—with the notable exception of the *Montreal Gazette*—have a double balance to maintain between the ideas advanced by English-Canadian media and their own.

Quebec commentators, as much as Quebecers themselves, are equally divided between federalists and sovereigntists. Thus, each side is under the constant scrutiny of the other. Any balance is, for them, very difficult to achieve. And to measure! It may lead to such excess as keeping a log book of all interventions, measuring minutes and seconds allocated to each side and then distorting the importance of one particular side to make sure there is a balance.

There are two points to keep in mind:

- Any analysis of the Quebec media must take into account, or factor in, the role played within Quebec by such outsiders as the English-Canadian media.
- The Quebec media lack good polemicists such as Diane Francis or Peter Newman. Quebec columnists have many talents but refrain from making provocative statements because of the diverse nature of their audience. The consequence of this is the emergence of polemicists, such as Pierre Bourgaud, who are stating the obvious, but who are nevertheless pilloried. What is deemed acceptable from a columnist, or a cartoonist, is not politically correct from an individual who is

perceived as the spokesperson of one group or one party.

A "SPECIAL" ROLE?

Modern media have a propensity to "line up the radicals." It makes better copy and explains the success of open-line shows where radical statements go on air totally unedited.

Of course, in a referendum debate, both sides will appear radical. There is no place for nuances—"maybes," "on the other hands"—in such a debate. Another distinctive feature of any referendum debate is that it forecloses other legitimate debates, about the quality of the educational system or euthanasia, to name a few. Moreover, because this "yes" or "no" to sovereignty" debate has been going on for 20 years, the Quebec media have helped to create a generation of political illiterates. This may explain the poor quality of discussions that have taken place in the regional commissions on the future of Quebec.

If there is any "special" role for the media, it should be one of enlightening the debate about the future of Quebec. But journalists are no experts themselves. And the ones that could help the media to play such a positive role—academics and bureaucrats—have no interest in participating in this educational process. It is unfortunate that too often journalists are approached by groups of academics or bureaucrats—not to say a word of politicians—to "communicate" something, not to help journalists inform their public.

"RESPONSIBLY," YOU ASKED?

I am afraid there is no such thing as "responsible" media in this modern age of the multi-channel television. Indeed, television networks set the tone and agenda of political debates, including:

Continued, see "The Media's Special Role and Responsibility" on page 94.

"The Media's Special Role and Responsibility,"

continued from page 95.

- A very *superficial* way of informing people where images and symbols are more important than concepts and ideas. We are reaching the point where a political option may succeed, or fail, because of the skills of the political leader who personifies such an option.
- A very *simplistic*, almost cartoonish, way of debating issues. And referenda being the most elementary form of any political debate—it takes one word, "yes" or "no," to settle it—television is *the* medium par excellence. If there is any referendum this year, it will be interesting to see how both camps adjust. For example, it was one thing in 1980 for Marc Lalonde or Monique Bégin to whisper to a group of seniors that, with a separate Quebec, they may lose their pension. If today's Paul Martin or Lloyd Axworthy were to make that argument in front of a camera, their message would be amplified to the point perhaps of killing their case.
- An *antagonistic* medium. It is impossible to go from Somalia to

Yugoslavia to the crash site of an airplane and then to a civilized debate about the Triple E Senate. We have blood on the set, people shooting and crying; and the more they look outraged, the better show it is. Television works counter to consensus building in any national debate. One might say that in a referendum debate, it is all the better since it is sort of a showdown. It may be. But I suggest that the scars of modern political debates, because of their dramatization by television coverage, will run deeper, much deeper. And it is an issue worth considering when one asks the other question: "Can both Canada and Quebec win in this game?"

There is a last issue about the "role of the media" in this age of telepolitics. It is the "CNN phenomenon"—that is, the creation of the CBC's *Newsworld* and of the French Radio Canada's *RDI*. They can bring—live—any event of interest for political scientists, bureaucrats, and influencers. Just think of the magic of this medium where a press conference in Ottawa provokes immediate reactions in Victoria and St. John's—and all of this is accessible

from living rooms in Montréal and Toronto!

This form of television has become such a point of reference that journalists and politicians keep tuned to those channels. Indeed, because they are news by themselves, political debates can easily spin out of control. Given the very sophisticated nature of modern media—with computers, cellular telephones, and satellite links—people are immediately, and in very great detail, informed on what the governments are doing on their behalf. Just compare the modern debates about the future of Canada and the extreme secrecy that covered the 1864 Charlottetown conference. It may be that referendums are a mere byproduct of modern communications. Put another way, the media may not only have a "special role to play," they may be the ultimate *raison d'être* for those referenda.

Michel Vastel is national columnist for Le Soleil (Quebec), Le Droit (Ottawa), Le Quotidien (Chicoutimi), and a feature writer for the magazine L'Actualité.

GUNBOAT DIPLOMACY AND THE RULE OF LAW

by Jean-Gabriel Castel

BOARDED AT GUNPOINT

On March 9, 1995, in an area of the high seas adjacent to the Canadian exclusive economic zone (EEZ) off the Grand Banks of Newfoundland, a Canadian government vessel, after firing several rounds of ammunition across the bow of the Spanish vessel the *Estai*, forced her to heave to. She was boarded at gunpoint for the purpose of inspection

and search. Upon allegedly finding numerous violations of the *Coastal Fisheries Protection Act* ("the Act"), the *Estai* and her master were arrested and escorted to St. John's, Newfoundland.

Upon posting a bond, both were released pending court proceedings. This action was taken pursuant to the Act as amended in May 1994, which prohibits classes of foreign

fishing vessels from fishing for straddling stocks in the regulatory area of the high seas beyond the EEZ, an area covered by the 1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO), in contravention of certain conservation and management measures.

The Act allows the use of force to disable a foreign fishing vessel if the Canadian protection officer is proceeding lawfully to arrest her master and believes, on reasonable grounds, that such force is necessary. In this case, the master of the *Estai* refused to heave to and have

his vessel boarded and searched. The Act also extends the application of Canadian criminal law to the NAFO regulatory area and allows for hot pursuit to begin there.

CONFRONTATION AND ADVENTURISM IN INTERNATIONAL DISPUTE RESOLUTION

In arresting the *Estai* and her master, did Canadian authorities violate international law? The European Union and the Spanish government claimed that this action constituted a flagrant violation of international law, both customary and conventional. A century ago, it would have been considered a *casus belli*. Firing upon the *Estai* in international waters violated Canada's obligation under the United Nations Charter to settle international disputes by peaceful means.

Today, resort to force is limited to self-defence and actions under the authority of the Security Council. Even in the case of hot pursuit, only reasonable force can be used to stop an offending vessel. No hot pursuit was involved here; moreover, the provisions of the 1994 Canadian amending legislation do not comply with the customary or conventional international law on hot pursuit.

The European Union pointed out that the arrest had taken place on the high seas where, according to international law, freedom of fishing is the rule, though with due regard for the interests of other states. A Canadian government vessel that encounters a foreign ship is not justified in boarding it, let alone arresting it, unless there is reasonable ground for suspecting that the ship is engaged in certain activities such as piracy or the slave trade. Violations of fishery conservation and management measures are not justifiable grounds. By acting as it did, the Canadian government threatened the freedom of all states to use

the high seas for legitimate purposes.

Confrontation and adventurism are not proper means of settling disputes between states. Although Canada, as a coastal state, has a special interest in imposing necessary temporary conservation measures beyond its EEZ to protect fish stocks, these measures cannot be enforced without the agreement of interested states, obtained either directly or through appropriate subregional or regional organizations.

The NAFO, a regional organization arrangement governing scientific research and fisheries beyond the EEZ, to which Canada is a party, provides for conservation and management measures including surveillance and inspection under an international scheme of joint enforcement. At the moment, arrest and prosecution of violators are left to the flag state. Inspectors who are Canadian or nationals of other member states may board vessels in the NAFO regulatory area for the purpose of surveillance and inspection. Thus, by arresting the *Estai* and bringing criminal charges against her master, Canada was in breach of both general customary international law and the NAFO.

Canada's assertion that a 200-mile fishing zone was justified by customary international law was adopted as the EEZ by the 1982 Law of the Sea Conference. However, Canada's claim beyond that distance was rejected. Within the EEZ Canada has obligations toward other states, including the proper management of fish stocks. Yet, it is universally acknowledged that Canada's failure to manage fisheries in that zone has been monumental. Equally dismal is her record of enforcement against Canadian vessels violating the *Coastal Fisheries Protection Act*.

Beyond the EEZ, the NAFO has not succeeded in preventing the con-

tinued wholesale harvesting of fish and consequent devastation of fish stocks on the nose and tail of the Grand Banks. This explains why Canada extended the reach of its legislation to cover the NAFO regulatory area and took action against the Spanish vessel.

Although states are free to pass laws that have extraterritorial effect, they cannot enforce them in the territory of other states or on the high seas unless these states agree to such action. There is no such agreement on the 1994 amendment to the *Coastal Fisheries Protection Act*. Instead, the European Union is seeking its repeal on the ground that Canada, by unilaterally exercising its jurisdiction over the NAFO regulatory area, was extending Canada's EEZ beyond 200 miles.

Canada has always stressed the importance of settling disputes by peaceful means and professed its adherence to the rule of law. Here, it is unfortunate that Canada resorted to violent action to focus the world's attention on the necessity to preserve the living resources of the sea for the benefit of Canada and humankind.

NECESSITY: A DOUBTFUL DEFENCE

The defence of necessity allows a state whose national interests are threatened to violate the interests of other states. It is doubtful that Canada can invoke that defence in this case: it is a party to the NAFO, whose object is to safeguard its members' fish stocks beyond the EEZ, but has played a significant role in the depletion of fish stocks in the EEZ, and did not take other steps before seizing the *Estai*.

Canada's modification of the terms under which it will recognize the compulsory jurisdiction of the International Court of Justice does

*Continued, see "Gunboat
Diplomacy" on page 96.*

"Gunboat Diplomacy,"
continued from page 95.

not advance the rule of law: it seeks to exclude from review Canadian actions to preserve the living resources of the sea outside the EEZ.

On numerous occasions in the past, Canada has condemned the extraterritorial enforcement of foreign legislation, including U.S. anti-trust laws, trade laws prohibiting Canadian subsidiaries of U.S. parents from doing business with Cuba or with the now defunct Soviet Union, and illegal arrests made in Canada by U.S. enforcement agencies.

**PEACEMAKER AND
CONCILIATOR:
THE PEARSON LEGACY**

Gunboat diplomacy does not contribute to the sustainable management of fish stocks. Negotiation and cooperation, leading to a new agreement on quotas and their effective enforcement, to prevent overfishing of endangered species beyond the EEZ is the only solution. Thus, Canadians should be pleased that cooler heads prevailed and that this dispute was solved amicably by diplomatic means, despite irresponsible inflammatory statements made by both sides. The new agreement governing sustainable management of straddling fish stocks beyond the

EEZ could serve as a model for the preservation of fish stocks around the world and start a practice that could evolve into a new customary rule of international law. Ideally, it could lead to the adoption of a multilateral conservation convention under the auspices of the United Nations.

Lester B. Pearson's legacy, which cast Canada in the role of peacemaker and conciliator, was not sacrificed on the altar of local political ambitions. The costs of confrontation were too high and the benefits too few for all parties concerned.

Jean Gabriel Castel is a Professor of Law at Osgoode Hall Law School, York University.

Canada Watch Subscription Form

Subscription Rates:

\$75.00/8 issues	Institutions
\$35.00/8 issues	Individuals
\$20.00/8 issues	Students

For foreign subscriptions, add \$10.00 Cdn.

Canada Watch is a publication of the York University Centre for Public Law and Public Policy and the Robarts Centre for Canadian Studies of York University.

Name _____ Telephone _____

Address _____ City, Prov. _____

Postal Code _____ Signature _____

- Attached please find a cheque for \$ _____ Cdn. made payable to York University for 8 issues of *Canada Watch*.
- Please bill me later.

Fax a copy of this form to: **(416) 736-5546** York University Centre for Public Law
and Public Policy
Osgoode Hall Law School
4700 Keele Street
North York, Ontario
M3J 1P3