

## **Canada's New Constitutional Culture: A View from Atlantic Canada**

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## Canada's New Constitutional Culture: A View from Atlantic Canada

STUDIES OF A FAILED VENTURE SUCH AS the Meech Lake Accord might be expected to become mere historical curiosities. Some texts on this topic will be of more enduring interest, however, for they capture a profound transformation in what Alan Cairns terms Canada's "constitutional culture". From a past preoccupation with cultural dualism and jurisdictional federalism, debate has broadened to include a new agenda of group rights and status. Accounts of the Meech Lake debacle document fully the impact of "new" constitutional actors — women, aboriginals, language minorities and ethnic associations. Quebec's moves towards sovereignty and the uncertain response of the rest of Canada preoccupy scholarship since the failure of the Accord. Regional concerns of Western Canada also receive consideration, in texts about themes such as Senate reform. However, it is notable that the concerns of the four Atlantic Provinces remain marginal, and that few texts published during and after the Meech Lake debates have devoted attention to Atlantic Canadian concerns.

Alan Cairns has provided a useful approach. In a selection of essays edited by Douglas Williams, *Constitution, Government and Society in Canada* (Toronto, McClelland and Stewart, 1988) Cairns studies the impact of institutions on societal evolution, notably the importance of federalism in generating territorially based communities of interest groups, parties and bureaucracies owing loyalties to the provinces or the national government. In the 1970s, constitutional debate reflected the competing agendas of federal regimes that were seeking the preservation of central authority and national unity, and provincial governments that were promoting a decentralist conception of Canada. This rivalry affected debates over the division of powers, the amending formula and the Charter of Rights and Freedoms. In Cairns' estimate, this produced an inconsistent mixture in the 1982 Constitution Act of a provincialist amending formula (retaining provincial equality and permitting opting out) and a nationalizing Charter of Rights, tempered by the "notwithstanding" clause. Cairns predicted in 1984 that the rights consciousness inspired by the Charter would democratize constitutional reform. "Elitism and hierarchy are less compatible with the people we have become than the people we were. A failure to respond will leave us worse off, for our expectations have been raised...."<sup>1</sup> His words should have served as a warning to first ministers of the folly of imposing an elite settlement at Meech Lake.

In another perceptive collection, Cairns also documents how the Charter, and a more heterogeneous society, created new individual and group loyalties cutting across provincial boundaries. In his essays in Douglas Williams, ed., *Disruptions: Constitutional Struggle from the Charter to Meech Lake* (Toronto, McClelland and

1 "The Canadian Constitutional Experiment", in Williams, *Constitution, Government and Society in Canada*, p. 255.

Stewart, 1991). Cairns shows that the inherent contradictions of the 1982 settlement — which brought citizens into the Constitution via the Charter, but excluded them from the amending formula — resulted in a "frustrated culture of participation" (p. 30). Rights-holding groups perceived themselves as constitutional actors with a vested interest in constitutional outcomes. They attacked Meech Lake for its undemocratic genesis (in closed intergovernmental bargaining), its Charter infringements (implied by the "distinct society") and its "provincializing" elements (opting out, the immigration clause, and Senate and Supreme Court appointments). The Constitution had become an integrating document for many in English Canada; but for Quebec, the Charter was an "alien regime" which threatened francophone survival (p. 24). Hence, the democratization of the political order prompted defeat of the Accord and increased disunity on ethnic lines. Executive federalism, in which concessions to Quebec were demanded by all provinces, failed to represent popular sentiments in English Canada. But the concerns of governments were not wholly "irrelevant" to the Charter groups.<sup>2</sup> Indeed Cairns may underestimate their fears of the threat that excessive provincialization posed to national standards for social programmes. Groups which define themselves in non-territorial terms may also find their position threatened by any enhancement of provincial powers. However, Cairns indicates a profound challenge for future reforms. Governments will not accept popular ratification if it ignores their bureaucratic self-interest, while the public will not be satisfied with jurisdictional amendments alone. Despite innovative forms of consultation, from the Spicer Commission to the Constitutional Conferences of 1992 to direct aboriginal involvement, only legislatures can approve amendments, and consultation remains optional.

There have been several useful books and anthologies examining the Constitution and the significance of the Meech Lake Accord. David Milne, *The Canadian Constitution* (Toronto, Lorimer, 1991) provides a thorough analysis of the Meech debates and compares them with the 1982 constitutional discussions. Patrick Monahan, *Meech Lake: The Inside Story* (Toronto, University of Toronto Press, 1991) provides a detailed portrayal of each stage of these negotiations. Michael Behiels, ed., *The Meech Lake Primer* (Ottawa, University of Ottawa Press, 1989) is an excellent collection of articles and presentations to federal and provincial constitutional committees, providing the most comprehensive overview of the issues. Roger Gibbins, ed., with Howard Palmer, Brian Rusted and David Taras, *Meech Lake and Canada: Perspectives From the West* (Edmonton, Academic Press and Publishing, 1988) gives prominence to Western concerns such as Senate reform. David Smith, Peter Mackinnon and John C. Courtney, eds., *After Meech Lake* (Saskatoon, Fifth House Publishers, 1991) is a collection based on oral presentations given at a conference in late 1990. These volumes explore numerous and complex themes, but are of most interest for their insights on the transformation in our constitutional culture.

In jurisdictional and institutional discussions, the English-Canadian

2 "Citizens (Outsiders) and Governments (Insiders) in Constitution Making: The Case of Meech Lake", in Williams, ed., *Disruptions*, p. 133.

commitment to a strong federal government contrasts with Québécois aspirations for greater powers. Among the authors represented in *The Meech Lake Primer*, Deborah Coyne attacks the spending powers provisions of the Accord, which would undermine Ottawa's ability to create national social programmes, invite undesirable judicialization of policy disputes and fragment programmes as provinces pursued different priorities. Stefan Dupré believes this provision would legitimize federal spending in provincial jurisdictions, but would require intergovernmental compromises and permit provincial experimentation. Gerald Beaudoin maintains that entrenchment of Quebec's three Supreme Court justices and provincial nominations is consistent with federalism as a compact between the two founding peoples. This provision was attacked in English Canada because the premier of Quebec could control three appointments with no provision for breaking deadlocks if the federal government rejected his nominees.

In *Meech Lake and Canada*, David Elton points out that the provincial nomination procedure for Senate appointments could promote the gradual evolution of the Senate towards elections if premiers made prospective senators seek approval of the voters. Peter McCormick fears the interim measure would hinder reform by giving the premiers a stake in the patronage system; he prefers a ban on Senate appointments prior to reform. A Senate with existing powers but provincially appointed members could produce paralysis if Quebec appointed sovereigntists, or other provinces used senators to block legislation. Howard Palmer attacks the unanimity requirement on the grounds that the larger provinces would never accept Senate reform. McCormick believes that this fear is exaggerated, since in practice all provinces would need to approve such a major amendment. None of these analyses evaluates whether the "Triple E" model would promote responsiveness to regions or to interest groups as in the United States Congress. As Gerald Friesen argues elsewhere, representation of regional interests in Ottawa via a Triple E Senate would not be a panacea for the West.<sup>3</sup>

Women's fears that Meech Lake might limit the Charter guarantees of sexual equality where these conflicted with the "distinct society" or linguistic duality are outlined by Kathleen Mahoney in her contribution to *Meech Lake and Canada*. Weakening federal spending powers would inhibit the development of national programmes designed to enhance the position of women, who, as disadvantaged persons, rely more heavily on federal assistance than men. Québécois women's organizations regarded the "distinct society" as a positive contribution to women's rights and favoured stronger limits on the spending power; but the Fédération des femmes du Québec supported an amendment excluding sexual equality rights in the Charter from the distinct society clause. The government's intransigence in refusing to consider any amendments prevented the adoption of this reasonable compromise.<sup>4</sup> In *After Meech Lake*, Beverley Baines (supported by Donna Greschner) questions traditional conceptions of representation and electoral politics, and calls for gender-based representation in Parliament. Mary Eberts notes that

3 Gerald Friesen, "Cardinal Points on a Prairie Compass", in J.L. Granatstein and Kenneth McNaught, eds., *English Canada Speaks Out* (Toronto, Doubleday, 1991), p. 216.

4 Behiels, ed., *Meech Lake Primer*, pp. 89-90.

constitutional reforms will always be suspect for those charter groups (women, visible minorities and the disabled) whose members and issues are absent from established constitutional forums. In *The Meech Lake Primer*, she suggests government consultation and funding of women's groups to give them more input. (Eberts does not question the claim to representation by organizations whose leaders are not elected by women in general.) These authors justifiably argue that more representative processes for constitutional reform and parliamentary elections are needed to reflect Canada's social diversity.

Aboriginal leaders criticized the federal "abrogation" of aboriginal rights to secure provincial approval of constitutional change. Meech Lake failed to recognize aboriginals as one of the "fundamental characteristics" of Canada; moreover, it granted the vague status of "distinct society" to Quebec, after first ministers had refused to accept an undefined aboriginal right to self-government. According to Tony Hall in *The Meech Lake Primer*, unless distinct society and fundamental characteristic status were granted, aboriginals would be relegated "to the periphery of Canadian statecraft" (p. 442). The exemption of aboriginal rights from the distinct society clause did not allay fears of negative consequences for First Nations in Quebec. The spending power limits could restrict national cost-shared programmes for aboriginals. Requiring unanimity for the creation of new provinces and reform of central institutions could prevent amendments to turn the territories (whose populations are largely aboriginal) into provinces, to create aboriginal representation in Parliament and to clarify aboriginal rights. These affronts produced a climate of frustration and political activism among First Nations. In *After Meech Lake* Ovide Mercredi insists that aboriginal rights be the top priority, and he warns of territorial disputes if Quebec separates. This illustrates the challenges ahead, as each constitutional actor places its own priorities first. Nonetheless, aboriginal concerns can no longer be ignored by Canada or a sovereign Quebec. First Nations, alone among the Charter groups, existed as a people prior to European settlement and should have direct representation in any process of constitutional renewal.

Francophones outside Quebec supported the Accord's desire to promote the French language and culture in North America. But they also feared that Meech made their own survival tenuous. In *Meech Lake and Canada*, Karen Taylor-Browne, suggests that a provincial role in immigration could make capability in French a lower priority for future immigrants. The cost-sharing provisions reinforced provincial control over language, and could stall progress towards extension of French-language services. Quebec was required to "preserve and promote" its distinct society while the other provinces and Ottawa were only to "preserve" linguistic duality. The non-derogation clause meant provinces could repeal legislation promoting bilingualism, despite the requirement to preserve duality. Lest acceptance of Quebec's unilingualism undermine their quest for expanded protection in the anglophone provinces, these associations demanded that Ottawa be required to promote linguistic duality across the country. Anglophones in Quebec attacked the replacement of a bilingual vision of Canada by duality, which strengthened territorially based majorities at the expense of minorities. Distinct society would limit the use of Charter litigation to protect the individual

and collective rights of anglophones. In a brief reprinted in *The Meech Lake Primer*, Alliance Quebec appealed for the supremacy of the Charter over the distinct society clause, broadening fundamental characteristics to protect linguistic and cultural minorities, a federal and provincial role in promoting linguistic duality, and removal of the notwithstanding clause from the Charter, to prevent further infringement of minority rights. Ethnocultural associations believed that Meech Lake made linguistic duality and Quebec's distinctiveness superior to multiculturalism; they argued that the Charter should be given priority over the whole Accord to prevent this affront. Quebec's new powers over immigration should include guarantees to prevent negation of federal multicultural policies. Reliance on an "outmoded and discredited concept of two founding nations" made ethnic minorities "second class";<sup>5</sup> multiculturalism should be included in the fundamental characteristics of Canada. But these communities were not united; for Al Meghji, entrenchment of multiculturalism marginalized third force Canadians and trivialized problems of racism. An anti-racist commitment to individual rights, and contributions by all to Canadian culture and politics were preferable to the "folk dance" images of multiculturalism.<sup>6</sup>

In *Meech Lake: The Inside Story*, Patrick Monahan asserts that the Accord was a genuine compromise which reflected, rather than revolutionized, Canadian constitutional practice. He argues that the 1982 amending formula required intergovernmental "elite accommodation" and that closed negotiations were necessary to promote concessions. But closing the process to non-governmental actors appears inconsistent with the constitutional inclusiveness of the Charter. Furthermore, treating the Accord as an unchangeable "seamless web" was unnecessary. If Monahan is correct in suggesting that the "distinct society" did not imply horrible consequences, why could explicit guarantees not be provided for women, aboriginals and language minorities? Unanimity for Senate reform may have been a compromise between Quebec's demands for a veto and the other provinces' preference for provincial equality, but Monahan does not assess whether these positions were reasonable or should be modified to promote reform. The negative association of "distinct society" with violation of individual rights (such as the sign laws) did intensify English-Canadian opposition to Meech. But criticisms of the Accord had some substance, given the vagueness of this clause and the unpredictability of its effects. And why are the symbolic concerns of those who felt left out of Meech less significant than Québécois beliefs about the imposition of the 1982 constitution? In *The Canadian Constitution*, David Milne notes how a non-provincialist regional agenda (long popular in Atlantic Canada) of strong, responsive national institutions was compromised at Meech Lake by requiring unanimity for Senate reform. While the spending power provisions did not prohibit action by Ottawa, new initiatives may have become less likely; have-not regions and new social constituencies might have benefited from an increased federal role in setting national "standards". Monahan's proposals for a "rebalanced federalism",

5 "Multiculturalism in the New Canada", in Granatstein and McNaught, eds., *English Canada Speaks*, p. 235.

6 Parel in Gibbins, *Meech Lake and Canada*, pp. 174-5.

using both constitutional and non-constitutional means, address some of these issues. But his suggestion that we keep the process simple by "delinking" Senate reform and aboriginal rights from Quebec's demands would replicate the Meech stalemate. Other constitutional actors will not trust that such matters will be dealt with if Quebec obtains a veto, or if unanimity is required for future reform. A genuine compromise must meet Quebec's needs and at the same time address the symbolic and substantive concerns of regional and social constituencies.

The transformation of many Québécois constitutional preferences after Meech Lake is reflected in chapters by Guy LaForest in these collections. In *Meech Lake and Canada* LaForest initially argued that recognition of Quebec as a distinct society would contribute to the legitimacy of Confederation. English Canada's acknowledgement of Quebec's distinctiveness in enforceable constitutional language balanced linguistic duality with a strong territorial base for francophone survival in North America. It matched the individual rights of Trudeau's "universalizing" Charter liberalism with the collective rights of the Québécois. The "distinct society" clause provided Quebec with the tools for cultural and linguistic preservation. In *After Meech Lake*, LaForest argued that a homogenizing nationalism based on the Charter was the force behind opposition to the "distinct society". The rejection of Meech squandered the opportunity to correct the centralizing, pan-Canadian bias of the 1982 Constitution. LaForest points out that Quebec's dualist vision can no longer be realized within Canada, and a rupture of federalism would now be "prudent". The end of the Cold War, reduced American fear of continental destabilization, free trade, economic globalization, federal duplication and debt and the decline of Trudeau's anti-nationalist ideology have removed obstacles to independence. In another recent collection, *Options for a New Canada*, LaForest argues that Quebec will propose a confederal or sovereignty association model, to affirm its position as a "politically sovereign national community". The dangers and dilemmas of the transition are indicated, but not explored, in this statement: "Quebec must declare its independence, and must acquire the sovereignty needed to decide in which fields it seeks exclusive jurisdiction...and it must do so in a way that would not alienate the spirit of accommodation in the rest of the country" (p.104). Yet he does not indicate how this process can avoid acrimony.<sup>7</sup>

Pierre Fournier's *A Meech Lake Post-Mortem: Is Quebec Sovereignty Inevitable?* (Montreal, McGill-Queen's University Press, 1991) outlines the historical context of Quebec nationalism, and the demographic perils which francophones confront. It documents the frustrations of past reform efforts — the failure to secure renewed federalism in 1982, the loss of the veto, the conflict between Quebec's collective aspirations and individual Charter rights, and the Supreme Court's challenge to language and educational laws. Meech Lake did not rectify these problems. Fournier outlines the Accord's flaws — federal paramountcy over immigration, explicit recognition of Ottawa's right to spend in provincial jurisdictions, denial of a veto, vague "distinct society" clause enforced by a Supreme Court dominated by anglophones, federal and provincial responsibility to preserve linguistic duality,

7 Guy LaForest, "Quebec Beyond the Federal Regime of 1867-1982: From Distinct Society to National Community", in R. Watts and D. Brown, eds., *Options for a New Canada*, pp.104 ff.

and lack of new powers for Quebec. The "distinct society" did not protect Quebec's collective rights from the Charter or multiculturalism. In Fournier's opinion rejection of Meech should be welcomed by Québécois who want new powers in either a restructured Canada or a sovereign Quebec.

Fournier describes opponents of Meech as anti-francophone. While some critics were so motivated, he underestimates the complexity of English-Canadian society. Fournier accepts what Tony Hall calls a "tacit agreement" among nationalists to downplay the aboriginal role in the defeat of Meech to emphasize English Canada's rejection of Quebec's aspirations.<sup>8</sup> He ignores aboriginal communities' historic grievances at their loss of land and cultural identity. Although aware of the universal trend to cultural homogenization and Canada's increased vulnerability to American influences since free trade, he does not indicate how Quebec could withstand such pressures after independence. A sovereign Quebec will enforce unilingual French education for anglophones and control immigration on cultural grounds. But these practices will continue to be disadvantageous to individuals in the North American context, and could induce emigration from, and immigrant avoidance of, Quebec, thus enhancing demographic pressures. While the assimilation of francophones outside Quebec is undeniable, the end of bilingualism and withdrawal of cultural supports after separation will worsen this trend. How will Quebec demonstrate "unfailing solidarity" (p. 103) with these minorities, if it cuts them adrift through separation?

Quebec's economic progress is undeniable, but Fournier's predictions on its viability as an independent state rest on the unknowable consequences of economic disengagement. As Patrick Grady points out, the rest of Canada may need free trade, but not on Quebec's terms. Current policies beneficial to Quebec — high tariffs on textiles and clothing, commodity marketing arrangements for dairy and other products, and the Churchill Falls power contract — would end. Subtle changes in Canadian buying habits, motivated by bitterness, could prove damaging to a province which currently sells more to English Canada than it buys from it.<sup>9</sup> One wonders if, in free trade negotiations, the Americans will be tolerant of statist policies of economic promotion, foreign investment controls and linguistic requirements for corporate operations, all of which Fournier considers crucial to Québécois progress. Recent cases suggest that free trade is vulnerable to American electoral politics. Quebec will have leverage in negotiations, but it should never underestimate the challenges of bargaining with two larger trading partners. Foreign lenders and investors might insist upon a "structural adjustment" programme of retrenchment in social services and public investment to restore confidence in the Quebec economy. Fournier may underestimate the benefits to Quebec of federal employment and expenditures, which favour the central provinces over the others. A small nation, forced to assume its share of Canada's debt burden and to compensate for the loss of fiscal transfers, will require a high tax burden and

8 Tony Hall, "Aboriginal Issues and the New Political Map of Canada, in J. Granatstein and K. McNaught, eds., *English Canada Speaks Out*, pp. 137-8.

9 Patrick Grady, "The Economic Consequences of Quebec Sovereignty", in Granatstein and McNaught, *English Canada Speaks Out*, p. 351.



high interest rates, which could put Quebec at a competitive disadvantage.

Robert Young, ed., *Confederation in Crisis* (Toronto, Lorimer, 1991) features discussion among English-Canadian and Québécois scholars. Edouard Cloutier emphasizes the right of the Québécois to self-determination, recognized by the Liberal regime and the Belanger-Campeau Report. Yet he almost implies the ability to dictate future arrangements to the rest of Canada. Realistically, Québécois can opt only for independence; structures such as sovereignty association will require codetermination with people and governments in other provinces. Roger Gibbins is pessimistic about the prospect for a settlement if the people become directly involved. Some in English Canada favour "playing chicken" with the nationalist movement in Quebec" (p. 22). The Charter has restored legitimacy to "subterranean anti-Quebec, anti-French" sentiment by associating it with the defence of individual rights (p. 23). Given the numerous demands of new constitutional actors, popular input will overload the reform process, producing a continual impasse. Informal, non-constitutional adjustments based on the status quo (which have accommodated Quebec since 1960) might be more successful, though lack of radical reform risks alienating Quebec. Pierre Fortin suggests that Quebec has the human, capital and technological resources to be economically successful as a sovereign nation. Quebec will likely secure trade and monetary union with Canada, but could have a viable currency and trade links with other partners if this failed. His assumption that Quebec's balance of costs and benefits from Confederation is zero is not substantiated; his dismissal of trade retaliation could also prove premature. Grant Reuber concentrates on the pressures for fiscal and jurisdictional decentralization, elimination of interprovincial trade barriers, and reduced duplication of services and debt burdens. Reuber supports a rebalanced federation, with decentralization in social policy and an enhanced federal capacity to promote the economic union. Both these economists are sympathetic to neo-classical theories on the disincentive effects of transfers to individuals and provinces, particularly in Atlantic Canada. The suggestion that all provinces ought to be responsible for raising the revenues they spend could leave six provinces without the money to finance services such as education and research, which are essential for competitiveness.

André Blais outlines the complex political situation in Quebec. While some nationalists emphasize intermediate options like sovereignty association, the business community is divided, and large corporations favour renewed federalism. Increased activism by Quebec's aboriginal peoples makes renewed federalism more attractive, since it would avoid "an overall re-evaluation of the social contract with native peoples" (p. 71). Blais astutely predicted the outcome of Belanger-Campeau, with its emphasis on acquisition of powers and its vagueness on future common institutions. Peter Russell notes that the consultative mechanisms established after Meech risk polarization as each provincial and federal commission acts in isolation, identifying incompatible priorities and failing to build consensus. He proposes a constituent assembly composed of provincial legislators, aboriginals and other interests to negotiate proposals for legislative ratification. This process is not guaranteed to produce agreement, but it may be necessary given Ottawa's lack of credibility and the possibility of violence. Russell warns that bilateral

negotiations between Quebec and Ottawa are unconstitutional and politically untenable, so Quebec will have to reach an agreement with the other provinces. As Young argues, the "outcome of negotiations, and hence the desirability of various options from Quebec's point of view, will depend on the reaction of the rest of Canada" (p. 3).

English-Canadian scholars are responding with various scenarios, some unsympathetic to Quebec. In *Deconfederation: Canada without Quebec* (Toronto, Key Porter Books, 1991), David Bercuson and Barry Cooper argue that Quebec's powerful position in national politics creates a preoccupation with constitutional matters, which causes neglect of Canada's economic problems. Quebec is also seen as a financial drain on Canada, as a major beneficiary of federal programmes such as unemployment insurance and equalization payments. Québécois aspirations for collective protection are irreconcilable with individual Charter rights, placing our liberal democratic heritage at risk. Nationalists consider the Quebec state the embodiment of the francophone community, not a neutral representative of all citizens, fuelling illiberal restrictions on minority groups. The Meech Lake debates clarified the untenability of Confederation. Bercuson and Cooper suggest that a peaceful divorce would permit both Quebec and Canada to pursue their own vision of rights, and promote liberal values, as both communities gain self-confidence and drop prejudices. English Canada could eliminate bilingualism, reduce social expenditures and restore a liberal, limited state. The short-term economic costs of separation would accrue to a business community able to take care of its own interests (p. 4). Quebec would somehow be peacefully compelled to surrender territories it acquired as a province of Canada (such as the Ungava region), grant independence to anglophone enclaves, and cede territory on the south shore of the St. Lawrence, as a bridge to Atlantic Canada. Eventually, it is predicted, Canada and Quebec will prosper and will live in neighbourly harmony despite the trauma of territorial readjustment.

The authors' concern for a link to the Atlantic may seem heartening, but it is questionable that boundaries would be changed without bloodshed or protracted animosity. Nor would the "complaisant" (their term) Atlantic Provinces accept the elimination of Section 36 of the 1982 Constitution; a Canada without equalization and regional development programmes could cease to be more appealing than the United States. The Triple E Senate might increase Atlantic Canada's representation in Ottawa, but if it resembled the American model it might also produce a government sensitive to wealthy special interests, and threatening to crucial social programmes. Moreover, the authors never consider why Ontario would accept its diminished stature in the national government, rather than pursue its own deal with its principal trading partner, Quebec. Meanwhile, the economic costs of separation will fall on those most at risk in a capitalist economy — workers and the poor, who are most reliant on state programmes — and not on mobile business and capital. Their proposal for the end of multiculturalism and collective rights would run against the direction of Canadian cultural evolution. This is a simplified analysis which ignores regional and social diversity in English Canada, and provides no workable solution for future relations with Quebec.

Phillip Resnick's *Toward a Canada-Quebec Union* (Montreal, McGill-Queen's

University Press, 1991) asserts the left-nationalist argument that free trade and Meech Lake combined would have weakened federal power and increased continental integration, threatening Canada's survival. He argues that these debates have clarified the English-Canadian identity, which is based on language, anti-American counter-revolutionary traditions, social and nation-building policies, and multicultural diversity governed by Charter rights. Meech Lake failed because it addressed only Quebec's needs and because the elitist amendment process was unacceptable to the public. Efforts to disguise the existence of the two "sociological nations" in Canada, from official bilingualism to Meech Lake, have been failures. While less inspiring, a territorial solution to the language problem appears inevitable, as Quebec asserts its unilingual francophone character and English Canada grows more impatient with bilingualism. Federalism itself is a doubtful proposition, as Quebec pursues continental economic ties and promotes jurisdictional decentralization inconsistent with English Canada's interests. However, there is an asymmetry in these political arrangements. Quebec's provincial state expresses its national concerns. English Canada lacks a political voice, however, since it is fragmented into nine provinces, and shares the federal state with Quebec. English Canada must create its own institutions (with a regionally sensitive elected Senate) to speak for its national interests in future negotiations. Sovereignty association is not acceptable if it gives Quebec equal say in monetary and economic policy. However, two sovereign nations would be competitive and unable to withstand continental pressures. Resnick proposes a confederal model, with separate parliaments for Canada and Quebec. Quebec would send members on the basis of population to a shared union parliament (the Canadian Senate) for foreign, defence, trade, finance, currency, citizenship and environmental policies. Separate constituent assemblies for English Canada and Quebec would devise constitutional arrangements for each nation, with joint negotiations on common structures.

Resnick's work is accommodating to the historic concerns of Quebec and rejects the proposals of "hotheads" to dismember Quebec territorially. Atlantic Canada might challenge his proposed reduction of this region's Senate representation; and Ontario would not accept the Senate (where the West would outnumber it) as the parliamentary body of the Canada-Quebec Union. Creating yet another level of government could only add to the complexity and expense of Canadian bureaucracy. He does not consider the implications for responsible government of differing parliamentary majorities in Parliament for joint and separate policy fields, which could cause instability and confusion. Keeping trade as a joint matter would not free English Canada from the free trade preferences of Quebec; nor would Quebec's sensitivities over James Bay make it favourable to joint environmental decision-making. While a constituent assembly might be the most democratic device for constitutional reform, there is no guarantee it would produce the moderate outcome Resnick envisions. The agenda proposed by Bercuson and Cooper may gain greater popularity in English Canada, and boundaries may be questioned in any popular forum. While useful for highlighting our commonalities, Resnick overlooks regional and social differences which may hinder the development of common institutions. It is not likely that his preference for a strong

central state will prevail if institutional restructuring occurs at such a fundamental level. Yet Resnick's scenario is a useful one, for if current negotiations fail, confederal structures of this sort may become necessary.

J.L. Granatstein and Kenneth McNaught's edited collection, *English Canada Speaks Out* (Toronto, Doubleday, 1991), demonstrates the dissension in the rest of Canada. Some authors are most concerned about the lack of an authoritative government for English Canada and the inability of Ottawa to negotiate on its behalf. Reg Whitaker argues that Quebec is currently demanding a response, but the current federal regime (led by a Prime Minister, cabinet ministers and opposition leader from Quebec) will not allow English Canada to define and express its genuine national interests. There is a strong note of populism throughout. Whitaker proposes a constituent assembly from English Canada, representing both legislatures and civil society. Tom Kent and Richard Gwyn propose a Canada-wide constituent assembly including Quebec, to design proposals, perhaps to submit to a referendum. As Milne argues in *The Canadian Constitution*, governments currently control amendments and need not accept popular involvement, despite widespread pressures (p. 313). But a common message emerges: the federal government cannot accommodate Quebec at the expense of English Canada's vital interests.

Accommodation remains a priority. For while Quebec would be seriously weakened by separation, the rest of Canada would also pay a heavy price. Granatstein argues that both nations would be more vulnerable to American demands on subsidies, culture, foreign investment and state intervention, as the United States plays region against region in a fractured Canada. Military intervention cannot be ruled out if violence and instability in Canada is perceived as a security threat by Washington. While Canadians may not advocate the use of violence to keep the country together, McNaught suggests the current Quebec ultimatum might spark unrest. A narrow referendum victory for renewed federalism could prompt mass action by separatists; a victory for sovereignty and a unilateral declaration of independence could (as in the American Civil War) escalate into conflict despite the best intentions of moderate leaders on both sides. The Canadian state could feel compelled to intervene to protect its property and loyalist citizens in Quebec if violence occurred. These analyses are effective warnings that separation may come at a heavy price.

Attitudes towards negotiations with Quebec are often hostile. Bruce Hodgins and Tony Hall claim that the Cree and Inuit of northern Quebec cannot be denied self-determination, and only a lack of courage on English Canada's part will cause the abandonment of these peoples after separation. Ian Robertson calls for a 30 to 50 kilometre-wide land corridor through southern Quebec (along the U.S. border) to connect the Atlantic Provinces to the rest of Canada; without such an arrangement, a "semi-hostile" Quebec could threaten to cut off links if concessions are not granted by Canada. Such territorial adjustments are not a mere "regional" concern of Atlantic Canada, but are "central to the internal cohesion and survival of a post-separation Canada" (p. 170). Minority communities throughout Quebec must also be given the right to self-determination where they constitute a majority of the population which is contiguous with Canada or facing open oceans, to avoid

conflict with the francophone majority. While concern for the aboriginal communities is valid, other proposals for the emulation of a "Greater Serbia" in North America cannot be accomplished without animosity and violence.

Other contributors are sceptical about "constitutional half-way houses" such as decentralized federalism. Bryan Schwartz suggests that English Canada should not make further "denationalizing" concessions, nor resort to threats to keep Quebec in Canada. Separation is desirable, for it allows English Canada to create a balanced federalism capable of unifying a regionally divided country. For Thomas Berger, Quebec independence can allow English Canada to retain a nationhood based on unifying institutions and social programmes. Independence will also give English Canada autonomy over economic and monetary policy, and joint management should not be accepted. However, he recognizes Quebec's right to its current boundaries, if Ottawa discharges its fiduciary responsibility to the First Nations. Johanna den Hertog prefers a reform based only on Quebec and aboriginal demands. We have never had a perfectly symmetrical federalism, she points out, and therefore should accept Quebec's distinctiveness. She correctly notes that Canadians' expectations have been raised to an unattainable standard by the recent proposals for wholesale reform. Nonetheless, the "distinct society" and division of powers (which form the Quebec "bottom line") are inextricably connected to institutional reforms. Placating Quebec by a general diminution of federal authority would undermine national policies to the detriment of Atlantic Canada. And asymmetry may not be durable if Quebec keeps its influence in central institutions.

Patrick Grady suggests there would be costs from separation. But a constructive, self-interested policy on co-operation with Quebec would be preferable to an emotional, retaliatory approach. The departure of Quebec, a large recipient of transfers to individuals and provinces, would reduce the costs of some programmes; if debt shares could be set at the level of relative population (with Quebec assuming close to one quarter), the costs of adjustment for English Canada could be minimized. Tom Walkom warns that Québécois seem willing to pay a price for the right to develop their own sovereign nation and that economic blackmail cannot be used to keep the province in Confederation. The consequences are unknowable in advance and could extend to the complete unravelling of English Canada or the demise of national policies vital to the Atlantic region. A strong central government, regional representation in national institutions, equalization, national standards in social programmes and education, multiculturalism, and native self-government are needed to preserve Canadian unity. Richard Gwyn also suggests that the rest of Canada should define its own sovereignty — its *raison d'être* as a "distinct society" — or face absorption by the United States. The awakening national consciousness of English Canada should be sharpened into self-interest. In Gwyn's view, Quebec's ultimatums should be rejected, and English Canada should set its own timetable for reforming its institutions, even if this provokes Quebec sovereignty.

In R. Watts and D. Brown, eds., *Options for a New Canada* (Toronto, University of Toronto Press, 1991), Ronald Watts warns that any unilateral declaration of sovereignty by Quebec, even as a threat to produce a confederal system, would create permanent fragmentation and hostility. However, a failure to

reform federalism could prompt Quebec to take such action; hence this volume seeks pragmatic means to ensure a process and outcome acceptable to all parties. Given the inability of the federal government to negotiate on its behalf, Canada outside Quebec must adopt extraordinary measures to ensure its diverse constituencies receive adequate consultation. Confederal devices such as sovereignty association are unlikely to provide more than a transitional solution on the way to complete separation. The authors in this volume favour renewed federalism, with a revamped division of powers and more responsive central institutions. While providing no common proposals, this volume contains the best compendium of contemporary options. It illustrates the challenge for Atlantic leaders, as they contemplate a bewildering variety of reform proposals.

Radical decentralization of powers to all provinces is recommended by Thomas Courchene to reduce the inefficiencies of federalism. Courchene downplays the implications for competitiveness of the decreased quality of education, research, development, worker training and infrastructure in have-not provinces after decentralization. A national labour market with no common quality will invite competition based on low-wage labour, which is incompatible with the demands of the information age. The federal government must remain strong enough to maintain national standards, or provide adequate equalization, to produce competitive citizens and infrastructures in all provinces. Fiscal burdens will limit Ottawa's capacity to discharge its responsibilities for quite some time, but this should not be the basis for permanent constitutional change. If Ottawa "solves" its deficits through "expenditure-shifting", and requires provinces to use more own-source revenues to finance programmes, many Canadians will receive less preparation for global economic competition. Monahan regards some general decentralization as the most likely outcome after Meech, because Quebec favours increased autonomy and the rest of Canada rejects asymmetry. But mere acceptance of public prejudices on these issues may not produce an optimum outcome; Whitaker argues that there is no public support for decentralization, and the Halifax conference this year preferred asymmetry.<sup>10</sup>

David Milne argues that the attachment to provincial equality in Canada makes explicit asymmetry unlikely. He advocates concurrency with provincial paramountcy in jurisdictions sought by Quebec (perhaps coupled with opting out, delegation of powers, etc.) to allow for asymmetry in practice while respecting the equality principle. Peter Meekison also supports concurrency, as well as the delegation of power from Ottawa to a province (or vice versa) opting out with compensation, and federal-provincial and interprovincial agreements, to allow Quebec to assume greater powers while preserving juridical equality. But other provinces might opt to exercise similar authority, reducing the political attractiveness to Ottawa of programmes and services which poorer provinces could not mount on their own. This seems likely if there is no change in the status of MPs from provinces such as Quebec, Alberta, British Columbia and Ontario which opted to create their own social programmes. It hardly seems likely that MPs from

10 Government of Canada, *Renewal of Canada Conferences: Compendium of Reports* (Ottawa, Constitutional Conferences Secretariat, 1992), pp. 22-3.

these provinces will sustain taxes and spending on programmes in the have-not provinces if they receive no political benefits. Atlantic Canadians must be aware of the possible limiting effects on federal spending. However, if some provinces insist on provincial equality, such devices may be the only alternative to decentralization or separation.

Peter Leslie suggests that informal fiscal and administrative arrangements and limited formal amendments could "rebalance" the federation on the principle of "subsidiarity", where a jurisdiction would be given to the lowest level of government able to effectively implement a service. This could involve an exchange, with Ottawa receiving greater authority to manage the economy, and the provinces re-acquiring exclusive social and cultural powers. No single principle of asymmetry or decentralization could account for the necessary changes, and elements of several should be combined in future adjustments. Robin Broadway reviews the efficiency and equity effects of fiscal and jurisdictional decentralization. He suggests that the federal government should retain primary responsibility for national equity, since similar treatment of individuals in similar situations is "a fundamental defining characteristic of a nation" (p. 249). He notes the efficiency aspect of equalization, which removes distorting inequalities in fiscal burdens on mobile factors like labour and capital. His proposals for national standards (via the spending power) for vital social services would assist this region. While asymmetry is not economically optimal, it would let the rest of Canada maintain a federal balance and meet Quebec's objections to national programmes. If asymmetry prompted other provinces to seek more powers, causing an economically distorting decentralization, separation would be preferable.

Can the benefits of asymmetry be obtained without unravelling federal powers? Alan Cairns argues that explicit asymmetry, granting select powers to Quebec only, and diminishing the role of Quebec MPs in these policy areas is a desirable, if risky, approach. Exempting Quebec from the Charter and the equality of the provinces, and recognizing its distinctiveness as a constituent nation, would be a "symbolically potent affirmation of Quebec's specificity" and may be "less troublesome" than the partial accommodations of Meech Lake. But asymmetry may only be a "way station on the road to a fuller independence" (p. 98). English Canada, preoccupied with a national self-definition which includes Quebec, and currently engaged in a "save federalism" game, will be ill-prepared to weather the storms ahead, negotiating with a cohesive and self-aware Quebec state. There is no single entity called English Canada, and our negotiators, however constituted, will have to grapple with the myriad demands of aboriginal, ethnic, gender, linguistic and regional voices which share some territorial, jurisdictional and Charter loyalties to Canada, but whose agendas are otherwise contradictory.

How can the politically weak Atlantic region make its needs known in this constitutional cauldron? Atlantic concerns are not served by those who would see Quebec leaving with little cost, or those who would accommodate Quebec at any price. Since no territorial link is likely after separation, Atlantic interests dictate a genuine effort to accommodate Quebec, but not if this means drastic decentralization. Atlantic regional self-interest must be defined, and constructively asserted, in a search for a creative mixture of new devices. The flexibility of

federalism to accommodate the jurisdictional needs of different provinces must be increased. Young supports asymmetrical federalism based on provincial paramountcy in language, culture and communications; other areas could be assigned on less emotional efficiency criteria (as suggested by Broadway). As Schwartz warns, asymmetrical or "buffet" federalism, where provinces conclude bilateral deals over powers with Ottawa, and receive generous funding for opting out, could lead to decentralization; asymmetry needs safeguards to prevent the wholesale gutting of federal powers. Asymmetry outside of limited cultural fields (especially in economic development, unemployment insurance, etc.) should be accepted only if institutional revisions remove regional biases from the national electoral system and give less populous regions a greater say in national policy developments. A rebalanced federalism may be a necessary risk for Atlantic Canada, and might be manageable if accompanied by a strengthened commitment to revenue equalization. As Young argues, in *Confederation in Crisis*, asymmetry "may offer the only way to defuse the drive towards Quebec sovereignty while preserving the capacity for collective action in the rest of the country" (p. 100). An effort must be made to balance these visions, while maintaining a sense of regional needs, for no post-separation scenario benefits Atlantic Canada.

What are the implications of Quebec's deadline for a solution by late 1992? If, as Dupré suggests in *English Canada Speaks Out*, the Quebec Liberals do use the referendum process to promote renewed federalism, will the outcome be a lasting one? Or will the heightened tensions of the post-Meech period merely mean that a deadline unmet will lead Quebec out of Canada? Monahan argues in *Meech Lake: The Inside Story* that symbolic pitfalls and misconceptions about proposed reforms may prevent a settlement. Québécois believe that "shock therapy" is needed (via a sovereignty referendum) to force English Canada to meet its demands; outside Quebec, there is little willingness to accommodate, and little fear that the province may actually separate. Monahan may correctly perceive that non-constitutional solutions or incremental revisions are preferable, but not feasible. But these texts suggest that the profound gulf in conceptions of national community cannot be ignored; the jurisdictional and institutional needs of both linguistic communities must be met to achieve any lasting settlement. English Canada must reassure Quebec that there is a place for its dualist vision in Confederation, even if this involves a different application of Charter rights and federal programmes in that province. Quebec must accommodate the genuine social transformation and regional divisions of its partners in Confederation, by accepting increased regional and social responsiveness in national institutions and respecting minority and aboriginal rights.

Despite the growing importance of new constitutional actors, most of the texts charting future alternatives focus on jurisdiction and territory, in response to the imminent threat of Quebec separation. But the failure to resolve the competing claims of the old order prior to new popular demands for constitutional recognition created the inordinately complex constitutional crisis we now face. For as Milne argues in *The Canadian Constitution*, all regional and jurisdictional agendas have lost touch with the "democratization" of the constitution (p. 293). Any constitutional reform which fails to address both the federal and the democratic



elements of the constitution will lack legitimacy. We must recognize that individual and collective rights can be mutually reinforcing, and that equality may require respect for differences between individuals and groups, as well as provinces. Greater self-confidence for majority language communities, inside and outside Quebec, can promote respect for minority rights, and can be accomplished within renewed national institutions. And aboriginal rights must be guaranteed in practice, not merely in rhetoric.

Debates over collective and individual rights, decentralization and centralization, asymmetry and provincial equality, and national unity versus Quebec sovereignty will persist no matter what constitutional settlement is reached. Thus, these recent books will remain useful resources on the contemporary evolution of the Canadian polity. If read constructively, they could guide Canadians to follow Gwyn's advice in *English Canada Speaks Out* to "apply their populist rage creatively, figuring out new political structures and conventions that would reflect more accurately the character of their political culture" (pp. 388-9). If reform efforts fail, they may be most useful for future autopsies on the Canadian constitutional experiment. Historians will surely want to query why one of the world's most peaceful and prosperous nations disintegrated into a Commonwealth of Irrelevant Provinces, riven by a cacophony of competing group loyalties in place of a common vision of community.

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