WHEN MORE IS TOO MUCH: QUEBEC AND THE CHARLOTTETOWN ACCORD

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On 26 October 1992, the people of Canada issued a resounding "No" to the constitutional reform package proposed by the country's political elite. For the first time the Canadian public was asked to decide a constitutional matter by referendum[1].

This political happening may be analyzed in several ways. We will settle with the painting of a scene in which certain elements will stand out in relief. After an impressionist review of the events that have marked the constitutional saga during 1992, we will bring forth and evaluate the main components of the Charlottetown Accord, with Quebec being the observation post.

The unanswered question that remains but which necessarily must be asked, is to what extent the failure of the referendum will end the constitutional debate? Yet again, many facets are pertinent, but it remains that unclear prospects with regard to elections and the public opinion of political parties and representative movements in Quebec and Canada alike constitute a major element in the spectrum of possibilities. One may analyze the uncertainty of the various players and of the evolving conjuncture, but one cannot escape it.

AN IMPRESSIONIST REVIEW

For a government struggling to survive, as was the case with the Conservative government, the constitutional exercise could have proved extremely difficult – and possibly even fatal. At the same time, the

referendum allowed the federal government to take the initiative and it could have turned the political situation to its advantage.

In either case, the Mulroney government was in a difficult situation. After the failure of the Meech Lake Accord, which had dominated Canadian political life from 1987 to 1990, governments (federal and provincial) of Canada-outside-Quebec had to propose a solution for change. Doing otherwise would have suggested that they considered the status quo acceptable. Such a position would have provoked public opinion in a Quebec already polarized by the Meech Lake process. Setting forth a new operation appeared to be a political necessity.

Throughout the debate on the Meech Lake Accord, the non-democratic nature of the constitutional reform process was stressed insistently by critics, particularly in Canada-outside-Quebec. Deliberations held more or less in secret – or at very least, not in public – have been a constant trait of Canadian constitutional history. In the wake of the *Charter of Rights and Freedoms* of 1982, however, a series of groups, associations, spokespersons, intellectuals and so forth presented themselves as promoters or defenders of one side or the other: these "Charter patriots" proclaimed that the constitution was not the business of governments alone, but a heritage that belonged to the entire Canadian population. As a result, one should not – or could not legitimately – modify the constitution without the participation and acceptance of the Canadian public.

The government tried to respond to this objection. First, it established in November 1990 the Spicer Commission – also known as the Citizen's Forum on Canada's Future – which was to settle Canadians' qualms about the constitution. Then followed the Beaudoin-Dobbie Committee, which was to gather reactions to the federal constitutional proposals put forward in September 1991. Its mission of public consultation eventually took the form of public constitutional conferences, all with a thematic orientation, and held at the beginning of 1992 all across Canada.

Coming from another angle, the Government of Quebec affirmed that the Quebec people were the sole masters of Quebec's destiny. At the same time, however, the Liberal government did not wish to opt

for a radical alternative. The signals the Bourassa government sent were contradictory.

At first, Robert Bourassa seemingly shared the population's strong resentment towards the ongoing constitutional process: he refused constitutional negotiations involving 11 governments, did not participate in intergovernmental issues unless they concerned Quebec's immediate interests, and he flirted with constitutional alternatives presuming the sovereignty of Quebec.

But these signals were mixed. At the moment of the adoption of the Allaire Report[2] on the constitution – which favoured a confederation rather than a federation – Robert Bourassa insisted at the party's annual meeting that Canada remained the first choice of the Quebec government. In much the same way, he subscribed to the report of the Bélanger-Campeau Commission[3] which fixed a deadline for a Quebec referendum on political sovereignty; almost concurrently, however, he insisted on the government's freedom to interpret the report's proposals as it saw fit.

In retrospect the attitude of the Quebec government was astonishing. It refused to negotiate in a process involving 11 governments and chose instead to wait for "offers" coming from the rest-of-Canada. The Quebec government thought it did not have to lay out specific conditions. What did the Quebec government really want? There was the constitutional position of the Liberal party, but its leader, Robert Bourassa, emphasized that this was not a government document. In any case, the constitutional position of the Liberal party was no reasonable base for a constitutional discussion within the framework of a federation. What is more, upon completion of the Bélanger-Campeau Report, the Quebec government set a deadline, by the adoption of a law that established that a referendum on sovereignty would be held at the latest by 26 October 1992.

Canada could ignore this threat or start a process of discussion that, at the least, would give the impression of trying to respond to the aspirations of the Quebec people. As much as 1991 could be perceived as a year dedicated to consultation, 1992 could equally well be perceived as a year of choosing.

TIME FOR A "CANADA'S ROUND"

It would be tedious to go over the entire process of constitutional negotiations that followed the death of the Meech Lake Accord. Regardless of how much one discusses the Spicer Commission, the Beaudoin-Edwards Committee, the federal constitutional proposals of September 1991, the Beaudoin-Dobbie Committee and its numerous constitutional conferences, and so forth – one fact remains: the centre of gravity for the negotiations had moved.

In the discussions leading up to the Meech Lake Accord – that is to say, from 1985 to 1987 – it was understood that negotiations involved nothing more than accommodating the "conditions" required for Quebec to subscribe politically to the constitutional reform of 1982. After the Meech Lake failure, the expression "Quebec round" lost all relevance in favour of "Canada round." A much broader set of questions could now be raised as legitimately as the restricted set of questions that constituted the menu of previous negotiations.

Which is simply to say, the Canadian program was clearly immense and encompassed some tremendously diverse subjects: a preamble to the constitution, a social charter, Senate reform, Aboriginal Peoples' claims, and federal authority in matters of economic union, among others.

From the Quebec side, the question of sharing of powers became a central issue. The Quebec government wanted, in 1987, to avoid any debate on that question. It hoped that the introduction of the interpretative principle of "distinct society" could lead to an expansion of Quebec powers.[4] But the constitutional discussions, which finally led to the Meech Lake failure (and those talks that followed), showed clearly that this potential, to the extent that it existed, could be neutralized in the course of new negotiations. The question of division of powers had therefore to be broached directly. In this fashion, the focus for Quebec was slowly turned from the distinct society clause to the question of division of powers.

Indeed, on 13 June 1991, Gil Rémillard, minister responsible for constitutional affairs, declared that the five conditions posed in

1987 were no longer sufficient and that it was now necessary to move towards changes in the power-sharing agreement. Following suit, the Quebec government devoted considerable time to the question of power sharing in commentaries pertaining to the proposals it had raised.

The space occupied by the subject of power sharing at first led participants in the thematic constitutional conferences held by the Beaudoin-Dobbie Committee to flirt with the idea of constitutional asymmetry. This would permit them to satisfy the demands of Quebec without imposing on the other provincial governments any responsibilities that they did not necessarily wish to assume. The federal minister responsible for the file, Joe Clark, himself proclaimed on 18 January 1992 that he was ready to offer special status to Quebec. This idea, however, was eventually overshadowed by the themes of strong central government, of independent government by Aboriginal Peoples, and of a Triple-E Senate.

ARDUOUS AND LABORIOUS NEGOTIATIONS

Following the March 1992 report of the Beaudoin-Dobbie Committee,[5] the provincial governments, the major players in the constitutional revision process with respect to the amending formulas, were called upon to participate in a process of negotiation – in order to define a position that would establish consensus and that could be proposed to the Government of Quebec.

Even if Joe Clark wanted to move quickly, he agreed, following the first federal-provincial meeting on the constitution (12 March 1992), to look again at his schedule. Furthermore, six newcomers obtained places at the table: representatives of the Aboriginal Peoples and of the Territories.

The negotiation followed a circuitous route. There were some obvious points: the native people imposed the notion of an "inherent right of self-government"; Senate reform constituted a major stumbling block; integration of the so-called "substance" of the Meech Lake Accord was finally accepted; there was a blockage on the question on the right of a veto for Quebec; there was division on the idea of

a "social charter" written into the constitution; and the objective of "reinforcing" provincial powers was accepted. Results were a long time in coming.

The Bourassa government abstained from formally participating in these negotiations, but it remained active behind the scenes. The refusal to negotiate in a body of 11 – and now one of 17 – participants was formally supported in a show of quasi-unanimity by the Quebec National Assembly on 18 March 1992. Simultaneously, the frequent meetings with the ministers and premiers of the other governments, the telephone conversations, the exchanges of information of all types – these all gave to the presence of Quebec a sense of character that was at the same time real yet invisible. What is more, the "knife-at-the-throat" strategy – the threat of a referendum on sovereignty if there were no interesting offers (a threat that had been officially adopted by the Quebec government) – seemed to be abandoned little by little as the talks advanced, especially as the moment of truth drew near (the pressing date of the referendum).

Various statements by Robert Bourassa suggested a pulling back. While in Europe in February 1992 he declared in Brussels that if the constitutional offers of English-Canada (or of the federal government) were unsatisfactory, he would hold the referendum on the theme of shared sovereignty within an economic union. Little more than a month later on 19 March 1992, all the while acknowledging his dissatisfaction with the recommendations of the Beaudoin-Dobbie Report – particularly on the sharing of jurisdictions – Robert Bourassa employed his inaugural address for the start of the 19 March parliamentary session to profess faith in federalism and to beseech English Canada to come up with acceptable offers. He came full circle some weeks later when, in an interview given to the newspaper *Le Monde*, he declared on 19 April 1992 his intention to hold a referendum on the federal proposals and not on sovereignty – as was stipulated in the law that he had had voted upon by the National Assembly less than a year beforehand.

The final negotiation session of the 16 "other" participants was on 6 and 7 July 1992. Following that meeting, a document outlining

a state of agreement was made public. English Canada succeeded in achieving an agreement on a constitutional revision and in making an offer to Quebec. This agreement was received coldly by many commentators and analysts in Quebec, and even Robert Bourassa expressed reservations about the presence of "substance" in the Meech Lake Accord, about the Senate proposal, and about the sharing of powers.

On 25 July, Bourassa remarked that he was awaiting responses to the uncertainties that he had expressed. When he did not obtain this satisfaction, he agreed to participate in a first ministers' conference some days later. For the first time (4 August and 10 August 1992), it might be said that, officially, discussions concerned only the process of the constitutional negotiation. After these two days, the Quebec government joined formally in the constitutional negotiations with a total of 17 participants. The sessions took place from 18 August to 22 August in Ottawa and, to refine the final text, on 27 and 28 August 1992, in Charlottetown.

For Quebec, this episode gave birth to arduous negotiations. The content of the negotiations, however, was determined by the agreement already reached by the governments of Canada-outside-Quebec and the Aboriginal Peoples. Any reopening of the principles of this agreement was ruled out. The Quebec government appeared condemned to pluck amendments from the margins of a constitutional document of which it had not been the co-author, which it had not negotiated and which had not been made to respond primarily to Quebec's preoccupations. The discussions conducted during the month of August stemmed directly from the agreement of 7 July.

One must remark upon the scope and importance of the constitutional revision that was being proposed – witness the number of subjects being treated and the overall importance of the repercussions for the Canadian federation.

For the entire federation, a "Canada clause" was introduced – this was to serve as a guide in interpreting the constitution – as well as a social and economic charter. With regard to institutions, the Senate was greatly reformed, the Supreme Court was constitutionalized in terms of status, composition, and nomination, and the proportional

nature of representation in the House of Commons was assured. The sharing of powers was approached in terms of federal spending power and the assigning of a few specific jurisdictions. For Aboriginal Peoples, the inherent right of self-government was recognized, which would lead to the establishment of a third order of government. Finally, the amending formula would be modified.

It may be useful at this stage to examine more carefully certain points in the final document that led to the referendum question put to the population on 26 October.

THE "HONOURABLE COMPROMISES"

This agreement[6] is striking by virtue of its extensiveness. In its way, it is a reform at least as substantial as that led by the Trudeau government in 1982 with the *Canada Bill*. The document, at least in terms of issues tackled, fitted in with the long-term priorities and aspirations of the federal government in 1968. Specifically, after the establishment of a charter of rights and liberties, it was understood that a second step was necessary: to modernize the federal institutions. The issue of sharing of powers was considered supplementary. Since the summer of 1980 the idea of a preamble, which would provide a general outline of the Canadian reality, had also been advanced by the federal government.

Now, based on the principles that define the reality, the values, and objectives of the federation, we had a "Canada clause" and a "Social and Economic Charter." In the domain of federal institutions, the Senate, the House of Commons, the Supreme Court, and the amending formula became objects for modifications. Furthermore, there was proposed the institution of a third order of government destined for the Aboriginal Peoples. Finally, there was a series of arrangements relating to the sharing of powers. Obviously, every part of the Charlottetown agreement concerned Quebec's institutional interests, but a more limited number related to the province's traditional demands.

A Copious Canada Clause

Those who were opposed to the Meech Lake Accord in 1990 saw the introduction of the Canada clause in the constitutional framework as an effective means to counter any potential interpretive criterion regarding the distinct society clause. In the Charlottetown agreement, this clause (a. 1)[7] was presented as a long article for the interpretation of the constitution, in its entirety, and of the Charter of Rights, in particular.

Beyond the attachment declared for the parliamentary regime, federalism, and the primacy of law, the clause includes two categories of specifications: those that involve the sociopolitical composition of the Canadian people, and those that recall the principles of liberty and equality.

The Aboriginals are designated as "Peoples," thus suggesting that there are several groups. From this they can, on one hand, promote their languages, cultures, traditions and, on the other, maintain the integrity of their societies. In this context, notions such as culture, language, and tradition are only elements of a society defined more broadly, a society that appears indefinite, multidimensional, and certainly extensive. Moreover, the concept of a third order of government was articulated in order to make concrete the principle of an inherent right of self-government for Aboriginal Peoples.

For a second time, Quebec was described as a distinct society within Canada, a society that unites the entire population within Québécois territory. This distinct society, which is not defined by its ethnic character, corresponds to a modern national community. Nevertheless it was not designated in terms of a nation or a people. The distinct society was rather reduced to a handful of traits: a majority of French-speaking individuals, a unique culture, and a tradition of civil law. The expression "which includes" preceding these traits identifying the distinct society would not make any difference for judicial interpretation. Whereas the notion of society for the Aboriginal Peoples was an open concept – despite its essentially ethnic character – in the case of Quebec this notion was restrained.

Further on, in paragraph 2 of this clause, the National Assembly and the Government of Quebec were provided a joint role in the preservation and promotion of the distinct society. This role, however, risked conflicting with the principle provided in paragraph 1(d) which committed Canadians and their governments (federal and provincial) to the vitality and development of official-language minority communities throughout the rest of the country. In other words, for Quebec, the government could indeed promote the concept of a distinct society but in a manner compatible with the rights and liberties of the individual, and with the vitality and development of the anglophone population.

What was stressed, as with other issues, was the importance accorded to individual – and collective – rights and liberties, to the equality of the sexes, and to the equality of the provinces (a. 1(1)f,g,h). This last principle is, let us keep in mind, the antithesis of the notion of special status or constitutional asymmetry. It thus seemed that the idea of an asymmetrical constitution that would permit a possible reconciliation of the traditional claims of the Quebec government and of the position of the other provinces had been definitely rejected.

In sum, we had the recognition of Aboriginal Peoples through a new order of government, a distinct Quebec society defined in a restrictive fashion and in which the juridical and political potential seem completely neutralized – and, finally, by the legal equality of the provinces, the renunciation of any notion of constitutional asymmetry.

An Equal Senate

The institution that would have undergone the most significant change was, without doubt, the Senate. Its members were to be elected, provincial representation was to be equal, and its role in legislative work would have been considerable and real. Each province would have had the right to representation by six senators (a. 8), to which was added one senator for each Territory. It was anticipated that eventually the question of aboriginal representation in this body would have to be discussed (a. 9).

The place of the Senate in the legislative process would have been quite complex. It would ratify or reject legislative bills according to

variable conditions. As well, the Senate could initiate legislative bills so long as they did not relate to budget issues. This body, where Quebecers would occupy only 9.7 percent of seats (as compared to the present 25 percent) would be required to play a singularly important role in the legislative process and in the selection of principal appointments to the major institutions of Canada.

In return, Quebec would have been guaranteed to benefit forever from a representation of 25 percent in the House of Commons. For the time being, this provision would be quite symbolic, because it confirmed the current situation and the situation anticipated for at least the next 30 years. In the long run, however, it constituted a guarantee against minoritization in the main federal legislative body as a result of regional demographic evolutions in Canada.

Sharing of Powers: Starting Point or Ultimate Concessions?

For the Quebec population, this question of powers is the acid test of any constitutional revision. This is not so much because other issues are without import. It is because in the context of negotiations – even those of a give-and-take nature – this seminal matter becomes a platform for establishing that there are sufficient reasons to accept all the other issues in dispute. Moreover, the neutralization of the distinct society clause helped bring this chapter further into the picture.

On the subject of the spending power, the principles in the Meech Lake Accord (a. 25) would have been maintained. That is to say that for a new co-financed program established in an area of exclusive provincial jurisdiction, the provincial government would have had the right to compensation so long as this government set up a program "compatible with national objectives." The Accord called for a framework to guide future federal interventions in areas of exclusive provincial jurisdiction.

On another point, in establishing legislative controls for both provincial and federal governments, intergovernmental agreements would have been protected for a period of five years maximum, but

with the possibility of renewal. This mechanism would be evoked in several domains (a. 26).

First, let us consider training and upgrading of the labour force (a. 28). The Accord beg an by establishing on one side or another exclusive responsibilities: to the federal government – the Unemployment Insurance Commission; to the provincial government – the training of workers. The provinces could limit federal expenditures in this last area by employing intergovernmental agreements. But at the same time this did not signify the abandonment of the sector by the federal government; it was stated that the federal government would have the authority to establish national policy objectives in the area of labour market development. These objectives might become a focus of consultations but, when all is said and done, they would be in force for provincial programs even when agreements on federal limits had been negotiated. In fact, a provincial government that "negotiated agreements to constrain the federal spending power should be obliged to ensure that [its] labour market development programs are compatible with the national policy objectives."

Next, the area of culture requires attention (a. 29). The Accord began by establishing that the provinces would have exclusive jurisdiction on cultural questions relating to their own territory. At the same time, however, the federal government would continue to hold responsibility for matters of Canadian culture. Notably, it maintained full authority for Canadian cultural institutions (such as the National Film Board or the Canada Arts Council), as well as for the grants and contributions that apply to these institutions. In this division between national and provincial cultural matters, the responsibility of provincial governments for cultural matters within the province would be acknowledged within agreements ensuring harmonization with federal responsibilities.

Six legislative areas (forests, mines, tourism, housing, recreation, and municipal and urban affairs), which were already thought to be under provincial jurisdiction according to a current interpretation of the 1867 constitution, were to be now considered areas of exclusive provincial interest (a. 30 to 35). This signified that the provinces

would have the power to limit federal expenditures in these matters by virtue of intergovernmental agreements. This arrangement seemed less designed to exclude the federal government than to coordinate its presence with the various provincial governments. In reality, up to the point that the federal government actually negotiates or renegotiates the form that its intervention will take, it would always be a major player in these fields.

Two other domains were designated as having shared jurisdiction: telecommunications (a. 37) and regional development (a. 36). When needed, negotiations between the two orders of government were to give way to intergovernmental accords, protected for five years. In addition, immigration (a. 27), which is already a concurrent jurisdiction, would also give way to federal-provincial agreements.

What is surprising about these constitutional arrangements is that the language used does not correspond to the usual sense extracted from the words. At first, when one designates a domain as exclusively provincial, one might well think that this means the jurisdiction is under the sole control of provincial political institutions. This is just not so. In fact, a concurrent presence of the two orders of government was accepted. What we had, in the end, was a particular form of shared jurisdiction.

Provincial exclusiveness gave the right to provincial governments to enter into negotiations before heading into intergovernmental agreements. These accords, however, would have been by nature administrative, with special power to renegotiate every five years and, in so doing, define the place the federal government would occupy. What is more, the negotiations could always result in a failure to agree: thus the federal government would remain in this sense a major player – indeed, a constancy.

From another side, there would have been a certain federal tutelage exercised in provincial jurisdictions. For example, for labour training and the limitations on the federal spending power, it would have been the federal government that established national norms, and for culture, the large institutions would remain under federal control. Furthermore, for all the jurisdictional sectors labelled exclusive or

shared, the federal government would define the conditions under which it would consent to intergovernmental accords. In a sense, then, the federal government was granted a sort of freedom-of-the-city in many provincial jurisdictions.

AN UNATTRACTIVE PROPOSAL

For the population and the political elite of Quebec, the results of the negotiations of July-August 1992 were clearly at a remove from traditional claims; and they were, in any sense, a very long way from the proposals of the governing Liberal party. The Bourassa government threw itself into a referendum campaign with "offers" which, only with difficulty, would extract great concessions. It had, on the other hand, to sustain proposals that had little resonance for the dominant political representation within Quebec, and for the constitutional vision most anchored in the Québécois political arena. What is more, it had to go against the expectations of the Liberal party, which had kept these self-same expectations alive throughout the previous two years.

When the federal Conservatives started their campaign, draped in the flag of an ambitious reform campaign, Quebec governmental forces preached a pell-mell resignation; it was impossible to do better but, given the various elements, it was nothing other than a marker along the way to a possibility of winning through subsequent negotiations. The proposal, it was understood, was not attractive.

What is more, there was the perplexity and the feeling of resistance towards the idea of Senate reform and the creation of a third order of government. Just what was to be gained by reforming this second House of Parliament – one that virtually consecrated a somewhat minuscule minority of Quebecers, and one that in itself refuted the bi national character of non-aboriginal Canadians? Could one leave it to various tribunals to define a third order of government, its powers and its territories? These were questions that were left dangling. Could one accept the definition of a distinct society – such as presently defined – in the Accord and its character as purely symbolic? Was Quebec more ahead of the game with the sharing of powers? Would

it be better to look at other alternatives rather than confirming the current entanglements based on official support?

The big and difficult question was: Does Quebec win? Even the most favourable responses were nuanced. On the government side there was an inclination to say "this is just a beginning." These proposals were greeted with difficulty.

Throughout the Quebec bureaucracy, there was an assortment of critical – indeed unfavourable – judgments on the continuation of negotiations and on the "gains" that might be had.

The result is all-too-well-known. The agreement was rejected by almost 56 percent of the electorate in Quebec. All four western provinces also rejected the Accord, as did Nova Scotia. And, as for Ontario, it recorded a weak majority. Overall, the Accord was opposed by 54 percent.

IS MORE TOO MUCH?

For Quebec, more was necessary. But more – was it too much? First of all, let us begin to point out that Quebec society was not on a death march; Quebec is neither destined to be part of Canada, nor to be independent. The path it will follow depends on a multitude of factors – among them, the manner in which it faces the constitutional question.

We can say that for many Quebecers sovereignty is no more than a default option. This is the attitude, it seems to me, of about 20 percent that represent the "swing voters" in the current make-up of our two-party system. And these are those who largely hold the key to the future. Globally, there is a widespread but deep attachment for Canada, but a Canada capable of recognizing the sociopolitical reality of Quebec and of permitting its institutions to assure a cultural flowering-linguistically, but also socioeconomically. If Quebec is still a part of Canada it is because a majority believes, even to this day, that this challenge can be met. But it would be presumptuous to take this fact for granted in Canada-outside-Quebec.

If we put the political sovereignty of Quebec in brackets for a moment, can anyone imagine a scenario that would make sense for

those wishing to meet this challenge? We could here and now – and henceforth – say that the die is cast and that it remains simply to draw conclusions: submission or secession? Elsewhere, Kenneth McRoberts has concluded in a recent study that Canada-outside-Quebec has hardened its attitude towards Quebec over the last 20 years and that a renewal of federalism that takes into account Quebec's traditional demands is improbable. This hardening may be explained in part by demographic changes and the economic rise of the west, but as McRoberts states "the growth of English Canadian resistance to duality and distinct status was primarily the responsibility of governments, most notably that of Pierre Elliot Trudeau."[8] He succeeded in convincing English Canadians to adopt his vision of the country and the place Quebec should have in it. This clear-minded evaluation leads us directly to an impasse.

But if one does not accept this conclusion, one must still address the fundamental question: to what extent is it possible to introduce a recognition of national communities into the Canadian constitutional order.

A negotiation among three national communities: (English) Canadians, Quebecers, and Aboriginal Peoples could be a path to explore.[9] Such a prospect could be fruitful in the sense that no party would have the pretense of imposing on any other any real expression of nationhood nor their model of identity.[10] A search for perfect symmetry would be illusory.

Discussions on a political pact creating a multinational and polyethnic state that would not clean the table of its present constitution, represents an hypothesis full of risks and ambushes. Such an hypothesis would demand a certain amount of work to dismantle Trudeauist certainties, but is it not also extravagant?

As for the Canada-outside-Quebec proponents, they are juggling here and there with the idea of negotiation among nations.[11] It is true, however, that they represent a minority.

But when one examines carefully the "closedness" of English Canada – which presents itself in the form of Charter patriotism, with uniform citizenship and juridic equality among the provincial

governments – that closedness appears, in certain places, nevertheless, capable of making concessions when negotiating the aboriginal question.

For the Aboriginal Peoples, in the Charlottetown Accord concessions were made to recognize one or more ethnic nations, to subordinate the application of the *Charter of Rights and Freedoms* to ancestral law and to the freedoms relating to the utilization or protection of their languages, cultures, or traditions (a. 2), to subordinate eventually their political citizenship to ethnic adherence (electoral body and eligibility) (a. 46), to establish a correspondence between one nation (even ethnically based) and a state level with sovereign powers (a. 41), to leave – should the case arise – the judiciary to define the jurisdictions of these governments and their territory (a. 41, 42).

To satisfy the claims of Quebec, it seems to me that the concessions required would not be so significant: the nation is more a territorial society than a kinship society; political citizenship has no reserves; for freedoms, it might be supposed that, in one way or another, the question of commercial sign language might be solved; there is already a correspondence (recognized in Meech and Charlottetown) between the provincial government and the Québécois community. It would be necessary to accompany provincial jurisdictions with shared jurisdictions in which the provincial must be preponderant[12] – for example: regional development, social security, labour training, culture and immigration.

One can envision diverse mechanisms. What is important from the start is to establish principles from which one can build constitutional reform. The time for building without vision has lasted long enough. In any case, in these matters, the people speak and make their will clear above and beyond these questions, even if one tries to camouflage them.

WHAT AWAITS US IN THE FUTURE?

If there is a pause at this moment, it will not last long. This is not quite the time for sleepiness. When the status quo guards the gates it becomes a beckoning for future unrest. Let us recall certain facts.

The political parties, federal as well as provincial, have practically nothing to propose to reform Canadian federalism. In a general sense, setting apart the sovereignist movement in Quebec and the Reform party in the west, the political elite was favourable to the Charlottetown agreement; it was disaffected by the result obtained. Even before the referendum result was confirmed, the anticipated defeat said to these people that one should definitely consider posting a moratorium on all constitutional negotiations. The current policy is more of a "wait-and-see" outlook.

How long is one supposed to remain contented with this attitude? Or, how long can such an attitude continue to be accepted? As much rests at stake in this as in the whole current constitutional debate.

On the Quebec side, the Liberal party will be tempted to set aside the whole constitutional question. For the party to settle for the present constitutional debâcle might appear to be political suicide, but without a credible alternative it seems to be the route they are ready to take. However, the die has not been thrown yet. Adding to this uncertainty is the possibility of a change in the leadership of the Liberal party in the coming months – because of the serious health problems of Robert Bourassa. This, of course, would favour internal debates on the question.

According to this scenario, the new Liberal leader could have difficulties in reconciling the gap between inflexible federalists and strong nationalists within the party. The ambiguities of Robert Bourassa permitted him to play both-and if it were possible – several sides of the fence. A new leader could well disappoint a clientele so well versed in this school of politics. This could be one of the factors that leads to the defeat of the present government in the next election – which must be held by the fall of 1994. And, broadly speaking, the electorate's

fatigue towards a Liberal government in its second mandate could be another factor leading to a defeat.

As noted above, for now, we have put in brackets the option of the political sovereignty for Quebec. These brackets are clearly artificial. One might estimate that the chances of the Parti Québécois winning the next election are reasonably good. If this is the case, the constitutional question will once again go back to square one. The new government will give the issue high priority in its agenda. Ways of obtaining independence are specified in a recent PQ publication.[13] But one can suppose that a majority vote in favour of sovereignty would be followed by negotiations well before setting in place conditions for sovereignty and common institutions. One cannot exclude negotiations that could touch upon common institutions evoking a confederation. In any case, it is certain that an electoral victory for the Parti Québécois will change the conditions of negotiations and, at the very least, render them inescapable.

Beyond that, for how long can we permit ourselves to be spectators – more or less passive – in the face of the various options and proposals, such as those advanced by the Aboriginal Peoples in order for them to concrete a third level of government despite the Charlottetown impasse. A call for patience will not suffice. Already we have witnessed many zones of tension. The installations of gaming houses on reserves creates a pretext for a new political crisis.

The current political situation is also paradoxical. No one quite sees exactly what it might take to revive the constitutional negotiations. The Charlottetown agreement was insufficient for Quebec and, it seems, for the Aboriginal People; the political elite was disavowed the moment there was a referendum by a majority of Canadians. Given the fact that the referendum route is almost indispensable in terms of major constitutional reform, it is difficult to see who could sway public opinion.

The situation is also paradoxical because no one knows how to stop these new negotiations in the very near future. The aboriginal question is going to raise its head, no doubt. The possible election of the Parti Québécois might also provide a degree of amplification. Besides that,

the next federal election may give us a thoroughly uncommon House of Commons, with five political parties represented substantially and a minority government in the lead. In this possibility, one could say that the crisis of legitimacy and representation of the traditional political elite might spill over into a parliamentary crisis.

Do these conditions – partially or totally joined together – announce a horizon that is politically blocked or the opening to a dynamic new alternative? It is impossible to say. For those who would square the current circle, it is perhaps necessary to have the equivalent of what might be called the "Big Bang" that will simultaneously touch public opinion and the political elite. The question is: Are we steeled enough for the preparatory stage of the "Big Crunch"?

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1 I am grateful to my colleague Alain Noël for helpful suggestions on a previous draft of this chapter.

2 *Un Québec libre de ses choix*, Rapport du Comité constitutionnel du Parti libéral du Québec, 25e Congrès des membres du Parti libéral du Québec, janvier 1991, 74 p.

3 Commission sur l'avenir politique et constitutionnel du Québec, *L'avenir politique et constitutionnel du Québec*, Rapport remis au Président de l'Assemblée nationale du Québec, mars 1991, 180 p.

4 G. Boismenu, "Through a Glass, Darkly: The Meech Lake Mirage," in A.B. Gollner & D. Salée (eds.), *Canada Under Mulroney. An End-Of-Term Report* (Montreal: Véhicule Press, 1988), pp. 48-64.

5 *Un Canada renouvelé*, Rapport du Comité mixte spécial du Sénat et de la Chambre des Communes, février 1992, 211 p.

6 For this section we refer to the *Consensus Report on the Constitutional Consensus*, Charlottetown, 28 August, of which the definitive text was made public when the referendum campaign had just begun.

7 Editors' note: "a." refers to numbered article in the *Consensus Report*, ibid.

8 K. McRoberts, *English Canada and Quebec: avoiding the issue* (North York: Roharts Centre for Canadian Studies, 1991), p. 14.

9 For a developed discussion see: G. Boismenu, "Is The Reconciliation of Ethnicity, Nationality and Citizenship Possible?" in J. Laponce and J. Meisel (eds.), Ethnicity and Canadian Constitution, forthcoming.

10 Greg Marc Nielsen writes: (trans.): "The symbolic representation of each event differs according to whether one belongs to one or the other of the existing

political cultures ... The two societies are thus relatively separate. But, at the same time, on the symbolic plan, their statements are profoundly inseparable, given their communal institutional history. How does one explain one without reference to the other?" *Possibles*, 16, 2 (1992): 67-68

11 P. Resnick, *Toward a Canada-Quebec Union* (Montreal: McGill-Queen's University Press, 1991); C. McCall et al. "Three Nations," *Canadian Forum* (March 1992): 4-6.

12 The system proposed by the Task Force on Canadian Unity in 1979.

13 Parti québécois, *Le Québec dans un monde nouveau* (Montreal: VLB Éditeur, 1993).