

## COMMITMENT AND COMMUNITY IN THE INTER-REFERENDUM PERIOD

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In *Reimagining Canada*,<sup>1</sup> I proposed a conception of political community and allegiance that was, I suggested, faithful to the structure of Canadians' political communities and consonant with their multiple allegiances. I described how our political institutions might be reformed to accommodate those allegiances, and why engaging in that reform was justified in normative, not just nakedly political, terms. I also suggested that such a reform would respond to Canadians' deep attachment to this country, that it would build upon themes that have been fundamental to our lives together as Canadians — that it would, if pursued, correspond to a conception of this country that “all Canadians share.”

What has happened to that vision in the months following the 1995 Quebec referendum? Doesn't all this talk of shared allegiance, of common vision, of a Canadian conversation, sound hollow, at least when it comes to the francophone/anglophone divide? Well, I regret to say, the answer is a qualified “yes” — at least on the evidence of the past two years. In this paper, I want to explore what has happened to that vision in the recent debate. I want to explore the state of our Canadian conversation, suggesting why it is in peril and what might be done to extricate it from that predicament.

Until recently, it might have seemed idiosyncratic even to talk of a “debate.” We have not been doing much debating. There may have been good reasons for this reticence. Canadians do suffer from constitutional fatigue. Other very important issues have occupied our attention, issues that have sometimes received short shrift because of our constitutional preoccupations. It may well have been unavoidable, then, to let the issue rest until people were ready for another round.

All that may have been true, but the lack of movement has nevertheless been troubling, for the cause of constitutional fatigue has been different in different parts of the country. The most troubling divergence lies between the weariness of many Quebecers — who very much want constitutional change but despair of ever seeing it — and that of many Canadians, especially in the West, who believe that the debate has been driven by what they take to be Quebec's unreasonable demands and who are perfectly happy to see those demands frustrated. Many Canadians may agree that today negotiations are not worth the effort, but the reasons are profoundly different, reflecting different kinds of alienation.

What is more, some of the inaction seems to be due to wishful thinking: to the simple belief that Quebec will never leave Canada; or to the hope that deficit-cutting (or the pitfalls of government, generally) will take Quebec Premier Lucien Bouchard down a notch, undermining the sovereigntist cause. These attitudes display a complacency that has little to do with the course of our constitutional discussions over the last thirty years. There are reasons for the sovereigntists' electoral support, and those reasons may have been aggravated, not lessened, by the result of the 1995 referendum.

In these circumstances, the Provincial Premiers' September initiative, restarting constitutional discussions, is welcome.<sup>2</sup> We need to begin talking about the issues again. It is worthwhile, however, to put the premiers' efforts into the broader context of the challenges we face. Those challenges are significant, and it will require wisdom, consistency, and insight to navigate them successfully.

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<sup>1</sup> Jeremy Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montreal: McGill-Queen's University Press, 1994).

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<sup>2</sup> For the text of the premiers' statement, see “Quebec's ‘uniqueness’ one point among many” *The [Montreal] Gazette* (16 September 1997) A6.

In this paper, I concentrate on the centrifugal forces affecting our present debate, especially those resulting from the 1995 referendum. By emphasizing those challenges, I do not mean to imply that the basis for agreement has been eroded irretrievably. I firmly believe that the vision expressed in *Reimagining Canada* (or something like it) still captures the heart of our national life and is potentially attractive to Canadians in all parts of the country. Citizens throughout this land, including Quebec, retain a profound attachment to Canada. The referendum result signalled the existence of severe strains within the federation — strains which, if ignored, could lead to a vote for separation the next time. But that vote has not been cast. Many who voted Yes in October 1995 manifestly did so for strategic reasons; their most preferred outcome is not secession, but renewed federalism. This paper suggests how we might proceed to rebuild our Canadian conversation on a more constructive basis, laying the groundwork for eventual constitutional renewal.

## CHALLENGE NO. 1: ARTICULATION OF A PAN-CANADIAN VISION

I should begin by clarifying an aspect of the argument in *Reimagining Canada*. That argument can be (mis)read as making an empirical claim that all Canadians, right now, actively share the conception of Canada sketched in the book. That, of course, is patently false; astute readers have judged the book's rhetorical stance correctly, perceiving that it is more exhortation than description. The argument is indeed built upon a series of empirical claims — about what shapes political communities; what gives them their significance for individuals; the fact that multiple allegiances need not conflict; and the fact that Canadians generally do hold strong allegiances to more than one political community (allegiances that Canadians traditionally have not considered to be inconsistent or competing).

These claims form the basis for the argument that there is a conception of this country around which the vast majority of Canadians can rally, a conception that preserves what most Canadians value about this land. That conception is not yet, however, dominant in Canadian political discourse. Although it is a strong *potential* point of agreement, it is one that must be articulated and argued. Persuading arguments can draw on aspects of our history, on our present practice, on features of our country that we cherish, but it is nevertheless an effort in construction, not simply the voicing of what is.

This brings us to one of the principal challenges of the current juncture. Our leaders cannot count on an established political position for which to fight. They must see the shape of an agreement that does not yet exist; they must articulate that possibility in a manner that draws upon the very real disposition among Canadians for a reasonable settlement; and they must fight for its adoption.

The challenge is made especially difficult by the absence of an obvious interlocutor in Quebec. It is not reasonable to expect that Lucien Bouchard will negotiate renewed federalism. He made his choice seven years ago. There may be more possibility of a settlement with him than there was with Jacques Parizeau, but that flexibility will be evident only when support for separation has been undermined at the popular level. Lucien Bouchard is capable of bowing to the inevitable, but he is not capable of Canadianizing the Parti Québécois.

Federalists' task, then, is to formulate an agreement for the country that can appeal beyond the present government to the people of Quebec, in the certain knowledge that the government will do everything in its power to subvert it. It is an unenviable task, one that can only be achieved with wisdom and a clear grasp of limits.

Frankly, I cannot see how it can be achieved without drawing on proposals that already have some currency in our constitutional debates, in particular the recognition of Quebec as a distinct society, combined with other elements of the Meech Lake Accord. As I have argued elsewhere,<sup>3</sup> there are good reasons of substance why those provisions should be acceptable to all Canadians. Moreover, they retain considerable appeal among francophone Quebecers, sufficient to suggest that a clear offer along the lines of Meech would substantially reduce the support for sovereignty, even in the face of the inevitable opposition of a Parti Québécois government. Although the provisions of the Accord are criticized by sovereignists as being too little too late, their continued hold is clear from their role as the standard of comparison, in the francophone news media and in political debate, for all subsequent constitutional proposals.

But what about the opposition in so much of the country? There is no doubt that there is opposition, and I do not mean to diminish its importance. But there is reason to think that there is at least some room, still, for argument. The Meech Lake Accord suffered from the unpopularity of its chief promoter, Brian Mulroney, and

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<sup>3</sup> *Reimagining Canada*, *supra* note 1.

his government's disdain for popular democracy. Moreover, the Accord became associated with a whole variety of unpopular events: the Quebec government's invocation of the notwithstanding clause to protect its language legislation (Bill 178); the award of the contract for maintaining the CF-18 fighter to a Quebec firm; continued resentment in Newfoundland over the Churchill Falls hydro-electric contract; and a host of other events. The Accord's very terms were poorly understood (many believed, for example, that it would have subjected all future constitutional amendments to the veto of every province, which was patently not the case). Many citizens opposed it for what it did not, rather than what it did, contain.

I do not intend to fight that battle again. But those features suggest that the opposition may have been wider than it was deep, and that a concerted effort at persuasion might yet be effective. In any case, it is difficult to see what alternatives there are, especially given the certain opposition of the Parti Québécois to proposals for renewed federalism. Some have suggested that we simply change the catch-phrase, from distinct society to something else, searching for a formula that can attract popular support. I believe we have to be careful not to play too fast and loose with the terminology. Adopting another phrase may reopen a debate that has seemed all too closed in recent months, and thus perform some service. But my sense is that eventually we will have to come very close to the substance of distinct society, and we should be honest about that. We cannot avoid the issues of principle involved. Constitutional reform is not a matter of market research. If we treat it as such, we are likely only to debase the coinage.

Ottawa's current support for the substance of the distinct society clause is therefore welcome. Indeed, the federal government's grasp of the constitutional dossier was immensely strengthened by the recruitment of Stéphane Dion and Pierre Pettigrew to the cabinet. The recent initiatives of the provinces also promise a renewed debate over the merits of recognizing Quebec's distinctiveness and the unique governmental responsibilities that go along with that. A continued effort of discussion and persuasion, over the long term, is needed.

## CHALLENGE NO. 2: PLAYING TWO GAMES AT ONCE

The job of making the case for renewed federalism in Quebec is profoundly complicated by the need to play a double game. No longer can Ottawa concentrate on a settlement, banishing talk of separation to the nether world of hypothetical conjecture. If the 1995 referendum did anything, it put the possibility of secession squarely on the agenda. Ottawa must, then, pay some attention to its position if a majority in the next referendum votes Yes. That agenda can enter into conflict with the attempt to achieve a settlement.

That is a real risk in the current Reference to the Supreme Court of Canada on the legality of a unilateral declaration of independence.<sup>4</sup> I do not think for a moment that Ottawa intends to prevent Quebec's secession by force. It would be extremely unwise if it did. But Ottawa must establish clearly, before a Yes vote, that Quebec cannot secede by unilateral declaration, for otherwise Ottawa would lack sufficient leverage to insist on a clear mandate prior to separation, on the one hand, and to negotiate division of the debt and assets, respect for the interests of Canadians wishing to relocate to the rest of Canada, protection of minorities within Quebec, and resolution of the specific concerns of Aboriginal peoples, on the other. Ottawa simply cannot leave the post-referendum period to a chaos of contending claims, without behaving with the utmost irresponsibility. It must attempt to achieve clear procedures for disentanglement even if, in the end, it would almost certainly acquiesce in a clear vote for separation.<sup>5</sup>

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<sup>4</sup> The Reference was made by Order in Council P.C. 1996-1497 (30 September 1996) and is reported in *Reference Re Secession of Quebec from Canada*, [1996] C.S.C.R. No. 421 (QL). The case is scheduled for argument in February 1998. It poses the following questions:

1. Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?
2. Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

<sup>5</sup> See Jeremy Webber, "The Legality of a Unilateral Declaration of Independence under Canadian Law" (1997) 42 McGill L.J. 281 at 283-86.

In the context of a search for settlement, however, with most Quebecers' attention still focused on the prospects for renewed federalism, Ottawa's case runs the risk of sending precisely the wrong message. It can be portrayed as a straightforward denial of Quebec's right to choose, a substitution of *main-forte* for any serious attempt to develop a positive solution. Attempts to prepare for the aftermath of a Yes can greatly increase the chance of that Yes occurring.

That risk was very high indeed while Ottawa was intervening in support of Guy Bertrand's action.<sup>6</sup> Bertrand and his supporters *do* want to prevent Quebec from separating, no matter what the vote in a future referendum. Ottawa attempted to distinguish its position from Bertrand's, but the simple fact of its involvement in his action made that impossible. Some of the damage has been repaired by the Reference, in which Ottawa has set the questions and therefore, to a greater degree, the terms of the debate. But some damage is inevitable. The simplest way to portray the purpose of the federal challenge is that Ottawa is trying to use the law to prohibit secession. There are many vocal anglophones in Quebec who want precisely this and provide thus apparent (though false) confirmation that this is the government's intention. Many will be unconvinced by Ottawa's protestations to the contrary.

Ottawa has little choice but to proceed. The situation that would follow a Yes must be clarified. But Ottawa should strive for ways to get its more complex message across. In this regard, Stéphane Dion's open letters to the Quebec government this past summer have been positive.<sup>7</sup> They state in measured terms and in the Minister's own words his concern with the process of disengagement. It would be valuable to see the government display similar vigour in the search for positive solutions. That clarity of purpose has not been so evident, perhaps because the government has not yet coalesced, as solidly as it should, around a viable set of proposals — perhaps for the reasons canvassed under Challenge No. 1. Having recruited Dion and Pettigrew, it would be wise to support them in the elaboration of a positive, as well as a negative, program.

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<sup>6</sup> For the decision at trial in that action, see *Bertrand v. Bégin* (30 August 1996), Quebec 200-05-002117-955 (Sup. Ct.). For an unofficial English translation, see *Bertrand v. Québec (A.G.)* (1996), 138 D.L.R. (4th) 481.

<sup>7</sup> French versions of those letters were published in *La Presse [de Montréal]* (13 août 1997) B2 and (27 août 1997) B2, and *Le Devoir [de Montréal]* (30 août 1997) A2 (in the body of a news article). Other articles paraphrased the letters. English versions can be found at *The [Toronto] Globe and Mail* (12 August 1997) A21 and (28 August 1997) A17, and *The [Montreal] Gazette* (30 August 1997) A6.

### CHALLENGE NO 3: THE FORCING OF INDIVIDUAL CHOICE

The challenge of Ottawa playing two games at once has its analogue at the individual level. Individuals too have to consider: "What if?" They too have to address seriously the prospect of separation. When they do, they are forced to choose their allegiances, in a manner that admits none of the ambiguity or multiplicity characteristic of federalism.

One of the fundamental premises of *Reimagining Canada* was that Canadians cherish their allegiance to Canada and to their province, and that they generally do not see those allegiances as incompatible or competing.<sup>8</sup> One of the pathologies of our recent constitutional debate has been the insistence that Canadians rank their allegiances, that they be "Canadians first" or "Quebecers first". A full commitment to Canada need not crowd out our more local attachments.

But now, Quebecers risk losing the privilege not to choose. The more real the risk of secession becomes, the more they are forced to decide which allegiance takes precedence — and thus their various allegiances do become genuinely competing. That has an inevitably polarizing effect on political debate, indeed on social discourse generally within the province. People are forced to choose sides, if only in anticipation. And as they choose sides, they loosen their grip on the other pole of their allegiance, allowing it to slip beyond their sphere of concern.

This process is well advanced among the anglophones and allophones of Quebec. When forced to choose they tend to opt for Canada, and so they begin to reduce their emotional and financial investment in Quebec and cultivate opportunities elsewhere. The process is less advanced among francophone Quebecers, because the myth of a post-sovereignty partnership has preserved the hope of dual allegiances (although, for reasons I suggest below, the hope is false). But nevertheless the polarization is visible in the increased tendency of moderate nationalists to disconnect from politics in Ottawa, a tendency reflected in the robustness, despite fluctuations, of the Bloc Québécois' electoral support.

This polarization is, of course, self-reinforcing. The basis for working together — the sense that one can be both a good Quebecer and a good Canadian — is

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<sup>8</sup> *Supra* note 1, *passim*, but especially at 24-6, 205-06 and 254-56.

eroded, the emotional separation is increased, and the demand to choose one's options becomes insistent.

## CHALLENGE NO. 4: THE POSSIBILITY OF THE SOVEREIGNIST MOVEMENT EVOLVING TOWARDS THE EXTREME

One consequence of these events has only surfaced in fits and starts, although I believe it may well emerge if Quebec moves concertedly toward separation. That is the prospect of substantial dispute within the sovereignist movement over the treatment of minorities, with the possibility of slippage towards the extreme.

Now this may seem counter-intuitive, given the repudiation of Parizeau's referendum night comments, Lucien Bouchard's accession to leadership, and his subsequent conciliatory gestures towards the anglophone community. Indeed a spirit of toleration is very much alive among the vast majority of francophone Quebecers, including many sovereignists. Many genuinely want reconciliation with anglophone Quebecers. But I am not at all certain that that spirit would survive, especially among the members of the Parti Québécois, if there was a concerted push for separation.

The fact is that the sovereignist movement is not a civic nationalist movement. It is a coalition, in which there certainly are civic nationalist elements, but in which there are also many members who are not at all committed to those ideals. This is clear when one looks to the *militants* at the grassroots of the Parti Québécois — those who chant “*le Québec aux Québécois*” at referendum rallies. It is also clear when one listens to spokespersons for the Mouvement Québec français, whose affiliated organizations form a substantial part of the PQ's organizational base. It is clear when one reads the Legault-Plourde draft report on linguistic conditions in Quebec, in which the use of French as a “common language” seems to mean that citizens must do everything in French, and the success of Quebec's language laws is measured by the extent to which allophones have lost their immigrant language, not merely (indeed not predominantly) the extent to which they have become fluent in French.<sup>9</sup> And finally in October and November 1995, it was evident in the

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<sup>9</sup> Quebec, Comité interministériel du bilan sur la situation de la langue française, *La situation de la langue française au Québec: Bilan* (janvier 1996) (draft), 176, 369, and 406. See also pp. 174ff., where the report adopts the aspiration of French becoming the “common language” of immigrants, but uses, as its principal indicator, the language generally used at home.

lukewarm character of the repudiation of Parizeau's referendum-night comments.

I want to make clear that I am not ascribing a lukewarm character to the interventions of all sovereignists. I well remember, for example, Alain Gagnon's immediate and unequivocal denunciation of Parizeau's remarks on national television. But I also remember the excuses made by many others during the days that followed, for what was obviously a deliberate stripping away of what was, for Parizeau, the mask of civic nationalism. It became absolutely clear during those days: a) that for many within the movement, civic nationalism was valued for predominantly instrumental reasons — as a means of freeing the party from the stigma of ethnic nationalism, and of defusing anglophone and allophone opposition; and b) that for many truly committed to civic nationalism, the preservation of peace within the sovereignist alliance came before the frank denunciation of intolerance.

That, to me, bodes ill for the future of cultural peace within the sovereignist movement. If Quebec moves towards sovereignty, I have no doubt that the allegiance of the overwhelming majority of anglophone and allophone Quebecers will remain with Canada. Many will leave the province, and this despite any moves by the Parti Québécois to placate the anglophones for, in the end, the only measure that can succeed is the abandonment of the sovereignist project.<sup>10</sup>

This will test the tolerance of the sovereignist movement. It will strip away much of the instrumental argument for the embrace of civic nationalism — as indeed the anglophone and allophone referendum vote largely has already done — for it will become clear that the allegiance of the anglophones cannot be kept. I suspect that the present leadership of the Parti Québécois will retain its commitment to an open Quebec, but they will have lost a powerful weapon in their arsenal against the more extreme elements within the party and will face increasing demands for action on language — as indeed is already occurring among the party's grassroots, especially the Montreal constituency organizations.

The outcome of that tension is uncertain, but it seems to me that, at least within the Parti Québécois, there is a risk of a self-reinforcing dynamic developing on this issue as well, with the party shifting towards a stronger line and that, in turn, reinforcing the linguistic

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<sup>10</sup> “La référendum et l'avenir des anglophones du Québec/The Referendum and the Future of Anglophones in Quebec,” (1995) 1(9) [I.R.P.P.] *Choices: Québec-Canada series* 16-27.

polarization within the province and the country-at-large. That would take the Parti Québécois well beyond the linguistic concerns of francophone Quebecers generally. We have already seen the party maintain positions to the linguistic right of the population-at-large. The party could end up carving out a cultural policy that does not have broad public support but that responds to the party's own internal dynamic, which would have, in turn, serious consequences for the constitutional debate.

## **CHALLENGE NO. 5: THE PERCEPTION OF COMMITMENT IN INTER-REFERENDUM CANADA**

Lying behind a number of these challenges is another more far-reaching concern — one that is perhaps the most troubling of all: the extent to which all parties are seen as being committed to a continued Canadian conversation.

During the lead-up to the referendum, sovereignists argued the possibility — indeed the inevitability — of a partnership with the rest of Canada. These arguments, although in most cases undoubtedly sincere, always struck me as impossibly naive. They ignored the experience of other secessions.<sup>11</sup> They argued the logic of economic interaction, without accounting for the very different economic interest of the Western provinces or the way in which similarly powerful economic interests, in other situations, have led to a much lower degree of association. But above all, they ascribed the possibility of resistance to a post-sovereignty partnership to pure vengeance, without taking into account the extent to which the intensity of collaboration we have known in Canada has been dependent on the perception of commitment to a shared enterprise — a perception that would be shattered by a referendum Yes. In the absence of that sense of shared commitment, I simply cannot see how anything like the present intensity of interaction could be maintained. My great fear is that the 1995 referendum may already have put an end to that perception of commitment.

Why is the perception of commitment important? The terms in which we usually discuss these issues, focusing purely on the rational pursuit of economic

interest, would seem to suggest that it should not be — or at least that any invocation of such notions is another eruption of the naive emotionalism that has occasionally bedevilled our discussions. But that, I think, ignores an extraordinarily important condition of our political lives.

A level of joint decision-making — of normative interdependence — anything like that now existing with respect to the Canadian economy or other aspects of our pan-Canadian polity, requires some confidence in all parties' continuity of commitment, in their willingness to make decisions with an eye to the relationship's continued health, in them having a breadth of concern beyond the particular transaction. This inevitably requires some sense of concern for the well-being and satisfaction of all participants in the relationship, which can provide the basis for those participants' surrender of autonomy and embrace of interdependence. Any intense form of normative cooperation requires, then, a measure of trust. That is what has driven the development of political institutions in the European Union in lockstep with economic integration.

When that perception of commitment is absent, the potential for collaboration is greatly diminished. That was graphically demonstrated when René Lévesque was engaged in constitutional discussions in the early 1980s. Many Quebecers believed that the strongest bargaining position was one that began with the hardest line — in the phrase of the late Léon Dion, where negotiations occurred "*le couteau à la gorge*." Nothing could be farther from the truth. Quebec's negotiating position was never weaker than it was under René Lévesque. Negotiations depend heavily on persuasion. Lévesque was incapable of persuading others that what he proposed was in the interests of the country as a whole because, of course, he had put those interests severely into question. More importantly, there comes a point in any such negotiations where the other parties say: "Why should I jump through hoops to accommodate Quebec, when it has no sense of commitment to the country?"

I worry that we may already have reached that point. That sentiment certainly seems to capture a large portion of the mood in the West. If so, it is tragic, because of course the commitment is still there among a great many Quebecers. But each suggestion that the commitment no longer exists — especially the inching towards a majority for the Yes side in a referendum (even if that majority is, in large measure, the result of a misplaced strategy to increase one's bargaining power) — brings us closer to the severing of that bond, so that the other negotiating parties draw back, Quebecers become still more disillusioned, and we slip towards separation despite our best intentions.

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<sup>11</sup> I am broadly in agreement with Robert A. Young's analysis of the potential negotiations, including his conclusion that the list of issues agreed would be short and would not include the creation of permanent political structures joining Quebec and Canada: *The Secession of Quebec and the Future of Canada* (Montreal: McGill-Queen's University Press, 1995) especially at 208ff.

## WHERE DO WE GO FROM HERE?

The challenges identified are substantial. Many are unavoidable. Given the state of our constitutional debate, we cannot expect quick fixes. How then can we move the debate forward, while containing the tensions created by the referendum?

In recent months, commentators have tended to talk in terms of “Plan A” and “Plan B,” the former directed towards achieving a constitutional settlement, the latter towards preparing for the aftermath of a Yes vote. I suggest we think in terms of a three-strand approach.

One strand must involve elements of Plan B. It would be irresponsible for the federal government to ignore the potential for a Yes vote. But Ottawa should make very clear that its concern is with establishing the framework for the accession of Quebec to independence in an orderly fashion (should that prove necessary), not the prohibition of secession by force. The attempt to establish orderly procedures for disengagement and for the just resolution of outstanding issues (including the status of the Aboriginal lands in northern Quebec, given the Aboriginal peoples’ express desire to remain within Canada) is perfectly compatible with respect for the democratic process. It would also be consistent with the views of most Canadians, who do not want to confine Quebec within Canada if there is a strong mandate for separation. This approach is most likely to have a salutary, rather than a damaging, impact on the referendum debate, for it serves to focus attention on the potential reality of secession — on the possibility of institutional discontinuity; the necessity of hard negotiations; the very real rupture that secession would involve, at a time when that reality has frequently been absent from the popular debate in Quebec.

In fact, in recent months, the federal government has been relatively successful at articulating this approach. It began badly with its apparent support for Guy Bertrand’s action. The damage caused will not be repaired quickly. But since the institution of the federal Reference, Ottawa has made better headway in explaining its objectives. Some negative fall-out is still likely, especially when the Supreme Court of Canada delivers its opinion (if, as expected, it holds that a unilateral declaration of independence would be illegal).<sup>12</sup> But negative fall-out is inevitable, given that most Quebecers, still hoping for a settlement, have yet to consider what secession would mean in practice, and thus see the question of law as dealing simply with the

general principle of whether Quebecers should be able to decide their own future.

The second strand in the three-part strategy concerns constitutional reform, the heart of Plan A. One cannot expect any concrete reforms in the immediate future. Such reforms are, for the moment, politically impossible, given that the Parti Québécois government will reject any form of renewed federalism. Even among the other governments it is difficult to expect that a viable package of amendments will emerge, both because of the hesitations of some provincial premiers and because, without Quebec at the table, the governments and their constituents cannot engage in the process of hard persuasion necessary to arrive at a package. In the near term, then, Plan A must remain a matter of aspiration rather than achievement.

Nevertheless, it is important that the governments work consistently towards viable solutions, if only to prepare the ground for the time when changes will be possible. In this context, two tasks are crucial. One is the establishment of a clear federal commitment to constitutional reform of a kind that has resonance in Quebec. For reasons given above, I think this commitment will have to draw upon the content of the Meech Lake Accord. That would affirm Ottawa’s support for a definition of renewed federalism that already enjoys legitimacy among the great majority of Quebecers (and indeed would be desirable on its own merits). The proposals might not be translated into constitutional form in the near future, but they would establish a pole of commitment for advocacy in the popular arena. The more precise the terms of Ottawa’s preferred constitutional reforms, the better. The ultimate terms will of course be subject to public consultation and negotiation, but the articulation of a desired outcome would make clear the direction of Ottawa’s own efforts, a clarity which may well render more manageable the long period of discussions prior to constitutional amendment.

The second task would be the reconstruction of the popular conversation over the nature of this country and Quebec’s place within it, a conversation undermined by the bitterness of the Mulroney years. In this regard, the Premiers’ September initiative is crucial. Their statement of principles is by no means a definitive solution. It does not purport to be; it is too vague and has, in its present form, no legal effect. But it does restart a conversation about difference and equality, about the significance of culture to the role of government in Quebec, that is crucial if constitutional reforms are to be achieved. It does not take the place of advocacy of specific amendments. It would be a great mistake if Ottawa simply collapsed its efforts into the Premiers’ initiative. But it does reopen discussion on

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<sup>12</sup> See Webber, “Legality,” *supra* note 5.

the questions of principle essential to any lasting solution.

There is, finally, a third strand that should be added to the governments' strategy, and it has to do with public expectations of constitutional reform. We have come to place a very heavy load on that process, indeed, we have come to see the constitution as the quintessential arena for affirming our identities and sorting out our interrelations. We have deified the written word: our identities are not secure, they are not valued, unless they have achieved explicit constitutional form. But of course, that profoundly exaggerates the impact of constitutions, underestimates the vitality of our societies, and would (if taken to its limit) tie our identities to terms that can never capture the complex and evolving character of our attachments.

We have to work, then, for a more modest and realistic sense of the role of constitutions. Constitutional change is necessary, but that reform can never fulfill the exaggerated expectations imposed upon it. We have to be much clearer, for example, about the conditions for the flourishing of Quebec's distinct society. That cannot mean that every Canadian must understand the country in the same way or even that everyone understand it in a way acceptable to French-speaking Quebecers. No country can achieve that. It is sufficient that a conception of Canada acceptable to Quebecers remains a vital force within the national debate and that that vision retains sufficient space to prosper. Those achievements are not uniquely dependent upon constitutional drafting.

Similarly with respect to the role of "powers" in this debate. Often that word is thrown around in purely abstract terms — we are told that "more powers" are needed — without much discussion of what those changes are. Are our constitutional struggles truly reducible to manpower training? Once again, we should be careful not to frame our constitutional discussions in such abstract and symbolic terms that no political regime could fulfill them. In recent months, Ottawa has pointed to the vagueness of the claims over powers, although with less effect than one would like.

Indeed, many of the elements in current federal policy promote the constructive approach advocated here. They suffer, however, from the fact that they are not presented as part of a consistent strategy. The lack of clarity about how the various strands relate to one another augments, for example, the problems associated with playing two games at once. For that reason, it would be useful if Ottawa produced a policy statement, emphasizing the three strands identified here and explaining their purposes and constraints. That statement would not foreclose consultation and

negotiation, but would clarify Ottawa's intentions in engaging in that process.

In the end, the third strand may prove our toughest yet most important challenge. At their best, constitutions provide a decent framework for interaction. But the real vigour of societies depends upon the richness of their lives, not upon the inevitably insufficient descriptions that find their way into constitutional form. □

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On 23 February 1998, I will take up an appointment as Dean of the Faculty of Law, University of Sydney. My thanks to Jean-François Gaudreault-Desbiens, Daniel Jutras and David Schneiderman for their comments. Previous versions of this paper were presented as part of the series on "Quebec and Canada: Implications for the Maritimes," at the Faculty of Law, University of New Brunswick, 6 October 1997, and to a plenary session of the Canadian Philosophy Association, Learned Societies Congress, Brock University, 1 June 1996.