

BACKING DOWN OR COMPROMISING THE FUTURE: QUEBEC'S CONSTITUTIONAL PROPOSALS

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INTRODUCTION

In this brief evaluation, I will focus on the Quebec government's assertion, as set out in its Draft Agreement on the Constitution², that "Quebec's proposals are designed to generate a new impetus for profound change in the Constitution."

First of all, I will try to describe the related proposals by the Quebec government in relation to the Canada Bill and Quebec's official statement opposing it. [Editor's note: "Canada Bill" is a term frequently used in Quebec to refer to the Constitution Act of 1982, or to the Resolution of the Canadian Parliament in December 1981, which contains the text of the Constitution Act. Neither the Government of Quebec nor the official opposition has ever acknowledged the legitimacy of the Constitution Act.] The phrase "to sign the Canada Bill" refers to Quebec's acknowledging at some future time, the legitimacy of a revised Constitution Act. Then I will briefly summarize the structure of the draft agreement. Of course, any change to the constitutional framework must be considered in the context of the entire political picture. This leads one to ask what significance Quebec's proposal will have for other governments in Canada, and what pertinence, or even political usefulness, it may have in the sparring between the government and the official opposition.

Lastly, I will consider whether reaching an agreement would mean that English Canada was backing down – or that Quebec was giving in on basic principles. On the whole, the least that can be hoped for is a guarantee that Quebec's future position will not be compromised.

A "FINE RISK" AND A CRUMBLING GOVERNMENT

For the moment, the constitutional proposal by the Government of Quebec marks the latest phase in the development of the Parti Québécois' policy on sovereignty, which has been the PQ's main objective since its creation. In response to the staggering blow of the Canada Bill, the Parti Québécois, as a partisan organization, announced its commitment to hold the next provincial election on the issue of independence.³ In such a "referendum election", a vote for the Parti Québécois would be a vote for independence. This position, which immediately lined up the PQ troops against Trudeau's federalist vision of Canada, did little to hide internal conflict over the conclusions to be drawn from the government's defeat in the May 1980 referendum. The provincial election to be held in 1985, or 1986 at the latest, the Mulroney government's election to power in September 1984, and the lack of support for sovereignty in the opinion polls were among the factors which fanned into flame an opposition which had been smouldering for a long time within the party.

In his speech opening the 1984 fall session of the National Assembly, Premier René Lévesque announced an abrupt reversal of party policy. Rather than emphasize the structural conflicts within the federal system, he focused on the mood of federal-provincial relations and the attitudes of the individuals involved. It was an analysis of the key players of federalism. Alluding to the new Conservative federal government, Lévesque stated that the new era that was beginning resulted from the atmosphere he anticipated: "all this, he said, gives us hope that we can finally find government leaders in Ottawa who will discuss Quebec's demands seriously and work with us for the greater good of Quebecers."⁴ With this statement, René Lévesque invited his party to take a chance on the "fine risk" of federalism. This support would best be expressed by accepting the Canada Bill provided certain conditions could be met. This position was confirmed in a serious,

personal statement by Lévesque to the Parti Québécois executive on 20 November 1984.

Of course, in affirming that sovereignty was not an issue in the election or even in the foreseeable future, and that in the meantime, a major task would be to firm up Quebec's constitutional status, the PQ leader was far from receiving unanimous support. The "orthodox" members opposed the henceforth dominant position of the party executive, labelled "revisionist". This opposition consisted of several key government figures (Jacques Parizeau, Camille Laurin and Gilbert Paquette, to name a few) as well as a significant number of party members and organizers. Moreover, a special party convention held 19 January 1985⁵ drove a solid wedge between the two sides and caused a government crisis: five ministers resigned and left the National Assembly or sat with the opposition, while two backbench members crossed the floor and one other resigned.

These defections, coupled with Liberal victories in the four resulting by elections (June 1985), greatly reduced the government majority and strengthened the official opposition to the point where it could threaten the PQ majority in the National Assembly. After the by-elections the National Assembly was composed of 61 PQ members, 53 Liberals and seven independents who had left the Parti Québécois ranks. Furthermore, another by-election will have to be held by the fall of 1985, owing to the resignation of J.-F. Léonard.

For the first time in nine years, the PQ government is threatened by a motion of non-confidence. Its situation is made more precarious by the fact that the former PQ members would not hesitate to bring down the government, as they proved on 18 June 1985, when they supported a Liberal non-confidence motion.

All actions by this wing of former Parti Québécois MNAs are guided by their desire to have their position on sovereignty triumph within the party. Although they no longer sit with the government, they remain party members. With their supporters, they have formed a political movement called the *Rassemblement démocratique pour l'indépendance* (RDI). This "internal caucus" will likely serve as a rallying point for any overt or covert attempt to steer the course of

the Parti Québécois. The party is now in the midst of a leadership campaign in which the party's position on the constitutional question is generating heated controversy.

Divisions within the party and poor performance in the opinion polls brought the question of René Lévesque's leadership to a head in the spring of 1985. On 21 June, faced with a crushing defeat in an election which could not (by law) be delayed beyond 20 April 1986, Lévesque announced his decision to step down. However, a pitched leadership battle does not augur well for the party. The new leader might be able to bring about a swing in voter support. However, the fate of the government would probably depend on the former PQ members who now sit with the opposition. They probably would not allow the new leader to continue in office long enough to shape an image of continuity accompanied by change.

In opposition is Robert Bourassa, newly elected as an MNA, who controls the Quebec Liberal Party with a firm hand. He is being somewhat patient, convinced that he will make a massive sweep in the next election. Although defeated in 1976, Bourassa intends to pluck power back from the PQ like a ripe plum in the coming election. His task is to draw together the disparate factions of the opposition; to do this, he must avoid making any major errors, gradually develop political credibility, compromise himself as little as possible on major issues, and build up his image with an "exotic" second James Bay hydro-electric power project. The final deadline is 20 April 1986. Time marches on.

But in order to judge the significance, scope and pertinence of the PQ government's constitutional proposal, more than a brief background analysis is required. Major changes to the constitution are important moments in a country's history, affecting the basic power structure; the changes will be confirmed by the realignment of the political system and the exercise of power. Therefore, we must assess the meaning and scope of the PQ proposals, taking into consideration both the 1982 constitutional reform, which it is intended to address, and the current political relationship between Quebec and the federal government.

1982: A NEW DEAL FOR THE USE OF PROVINCIAL POWERS

The 1982 Constitution Act established a new framework for the exercise of provincial powers. This framework was not created through a massive transfer of responsibilities, but rather through constraints on the exercise of acknowledged provincial powers.⁶ For the sake of brevity, we can say that the main constraints are contained in the Charter of Rights and Freedoms, especially its clauses on language policy and on the economic union.

To begin with, the Charter of Rights and Freedoms entrenched two complementary principles: the federal government is recognized as having exclusive responsibility for the collective interests of the Canadian people; and constitutional revision must be based on the sovereignty of the individual. The basic unit in the Canadian Charter is the citizen. Thus, despite the fact that Quebec nationalism was at the root of the principal constitutional debates, the Charter makes no reference to this distinct society and its collective rights. By contrast, the “aboriginal peoples of Canada” are mentioned (sections 25 and 35), and the promotion of Canadian multiculturalism is given as a criterion for interpreting the Charter. It also deserves mention that the federal government finally agreed to allow legislative derogations from the fundamental human rights contained in the Charter; however, two areas involving the exercise of provincial powers were excluded from the override clause: language rights and mobility rights.

The sections concerning language rights, particularly language of instruction, do not allow a provincial government to determine its own language policy exclusively and independently. Exercise of this power may properly be considered to be a political condition essential to the continued existence of Quebec as a national community. The immediate effects of the principles set out in the Canadian Charter were to impose radical changes on the Quebec Charter of the French Language and to reduce provincial control over language policy to the mere formulation of means to apply these principles. Lastly, the section on mobility rights (the right to move residence and gain a livelihood) which is a primary factor in maintaining the Canadian

economic union, directly interferes with provincial powers because it affects policies, legislation, institutions, programs and so on which restrict the circulation of goods, services, persons, capital and businesses. However, regionally restrictive measures are permitted if there is a higher-than-average unemployment rate in the area and if the measures are aimed at helping disadvantaged individuals. Notice that individuals needing help are given priority, and not measures to improve the socioeconomic conditions that lead to regional underdevelopment.

All in all, the 1982 Constitution Act significantly modifies the framework of provincial power by placing constraints on initiatives to tackle regional and national issues. Most of the key points are familiar ones:

- government actions are subject to judicial review;
- the rights of the individual take precedence, and the collective rights of the Quebec people are not recognized;
- the federal government is given exclusive responsibility for the collective interests of Canadians;
- provincial constitutional powers are subordinate to the inviolable principle of Canadian economic union;
- in matters of language provinces must conform to the principles imposed.

All of these points gravely impair the status of the Quebec government. The backdrop to this situation is Quebec's loss of the power, which it thought it possessed and indeed had exercised in the past, to veto constitutional amendments.

TWO INCOMPATIBLE CONSTITUTIONAL "LOGICS"

In December 1981 the Government of Quebec proposed a constitutional option that was irreconcilable with the underlying principles of the Canada Bill. In a motion passed by the National Assembly,⁷ the government put forth a counter proposal to eliminate constitutional restraints on the exercise of provincial powers, which limit effective action by the provincial government.

In response to the theory that Canada absorbs and integrates its minorities, the Quebec government argued that there were two founding peoples and that Quebec must be recognized as a distinct society within the federal system. Consequently, the collective rights of the Quebec people must be respected, and the Quebec government is the primary, if not exclusive, legitimate guarantor of these rights.

Whereas the central government regards itself as representing the general interests of Canadians and as guaranteeing the integrity of the economic union, the Quebec government proposes instead that it should have primary responsibility for the province's socioeconomic development, and that it should be the political expression of the Quebec community. This proposal combats the two elements in the Charter which infringe upon (Quebec) provincial power. In a version of the Canadian Charter of Rights and Freedoms that would be acceptable to Quebec, there would be no section 6 concerning Canadian economic union. In this way, the practices related to provincial regional policies could not be restricted in the name of free circulation of factors of production in an economic area that is unfettered by internal barriers. On language issues, there is no question of compromise.

For the federal government, constitutional reform began with an emphasis on "individual sovereignty", which in effect strengthens federal authority. Quebec cannot accept any constitutional reform that does not confirm its exclusive responsibility in areas under its jurisdiction. At issue is the idea that only the Quebec government can claim to represent the collective rights and interests of the Quebec people. Thus, in the amending formula, for example, the only majority that would count would be a majority in the Quebec National Assembly.

These two "logics" leave little middle ground: either the federal government has to back down considerably, or Quebec has to compromise its principles in order for the province to accept the Canada Bill.

CONDITIONAL ACCEPTANCE: QUEBEC'S SPECIAL STATUS

In its recent Draft Agreement on the Constitution,⁸ the Quebec government agrees to accept the Canada Bill and the federal system on the condition that special constitutional provisions guarantee Quebec a distinct status reflecting the distinctiveness of the Quebec people.

Recognition of Quebec as a distinct society is given as a prerequisite, since it is the cornerstone on which to build an agreement with Quebec.⁹ For this recognition to have a significant constitutional impact, it cannot be limited merely to culture; it must comprise also socioeconomic and political dimensions.

Historically, this explicit or implicit claim by Quebec governments has not had any of the desired results. We are told that Mulroney will change all that. However, if we look closely at his statements, this does not appear to be true. On 21 May 1985, in Winnipeg, he declared: "Quebec is, of course, distinct." "Quebec has," he stated, "unique responsibilities in the areas of language and culture." It is not that the Prime Minister was expressing himself carelessly; this qualification is a repetition of an earlier remark, made on 18 January 1985, when Mulroney stated that it was a well-known fact that Quebec was different, and that he considered it quite reasonable for Quebec's cultural and linguistic wealth to be recognized and respected within the Canadian system.

There is a long tradition of Conservative thought which suggests there will be clear differences within the party concerning recognition of the Quebec people. These differences are certain to widen when Quebec's conditions for an accord are discussed.

An implicit order of priority is apparent in these conditions. During the constitutional negotiations of the summer of 1980, the federal government divided the issues into those concerning the people and those concerning governmental powers. It was a way of dealing with, in order of priority, the Charter of Rights and Freedoms, equalization, the amending formula, and repatriation of the Constitution – the main components of the Canada Bill.

There are two sets of issues in Quebec's draft agreement as well: those concerning the people, which are urgent priorities; and those concerning government, which cover a much broader field and which, it is acknowledged, cannot be quickly resolved. Obviously, the first set, which essentially aims to neutralize the Canada Bill,¹⁰ is to receive attention first.

Rather than attempt to work within the Canadian Charter of Rights and Freedoms by proposing that it recognize the collective rights of the Quebec people, Quebec prefers to call for primacy of the Quebec Charter of Human Rights and Freedoms.¹¹ Such primacy would ease many of the Quebec government's concerns:

- to recognize the Quebec people without treating this collectivity as an ethnic minority within Canada;
- to officially identify the Quebec people with the provincial government; or to have Quebec laws prevail in areas of provincial jurisdiction, and thus maintain responsibility for language policy (especially language of instruction) and nullify the federal Charter's section on the mobility of citizens and goods.

I will come back to these last two items, but first I would like to clarify one point. It has been said recently that there cannot be two charters and two categories of Canadian citizens. As previously noted, the Canadian Charter contains an override clause (or "notwithstanding clause") which suspends application of section 2 and sections 7 to 15 when expressly indicated in federal or provincial law. The Quebec government took advantage of this clause in general for an initial five-year period.¹² During this time, the Quebec Charter of Human Rights and Freedoms was in effect; moreover, the Anglophone group Alliance Quebec invoked the Quebec Charter before the courts in order to invalidate the provisions of Bill 101 requiring the posting of commercial signs in French only. As we can see, the Quebec Charter already normally takes precedence over other Quebec statutes in areas of legal guarantees and equality rights.

We could compare the advantages and guarantees provided by the two charters, but for the moment, I would like to emphasize two consequences that the predominance of the Quebec Charter would

have. In return for legislative authority over language of instruction, Quebec promises to make two amendments to its own Charter¹³:

- The “Canada clause” of the Canadian Charter would apply in Quebec;
- Minority Anglophones would be guaranteed the right to their own cultural and educational institutions, and to receive health care and social services in their own language.

It should be pointed out that the mobility clause regarding persons and goods would not be included – the Quebec Charter is certainly not going to affirm Canadian economic union!

The first set of constitutional issues also contains the proposal to modify the amending procedure, giving Quebec a veto over changes to federal institutions, and either a veto over amendments to the Constitution or the right to opt out with full compensation. Quite apart from other issues,¹⁴ the right of veto once again raises the problem of legal inequality among the provinces, and the right to opt out with compensation nullifies the suggestion that Quebec is distinctive in a merely cultural sense. It opens the door to special status, which would confirm the actual situation of Quebec.

All in all, about 15 of the 60 sections of the Canada Bill would remain in force; we can thus say that the basic aim of the first set of proposals is to substantially modify the general structure or coherence of the Canada Bill as it applies to Quebec. Accordingly, with respect to the dilemma of which I spoke earlier, the Quebec proposals give ground to some extent but do not fundamentally compromise its position.

The second set of proposals goes beyond the Canada Bill. It calls for the redistribution of powers both by eliminating Parliament’s unilateral powers (i.e., controlling the use of the spending power and abolishing the powers of reservation and dis-allowance) and by increasing Quebec’s powers.

The Draft Agreement on the Constitution states: “The present constitutional division of powers in economic matters must be reviewed and certain powers already held by Quebec in the social and cultural

domains as well as the international domain must be increased". The proposals seek primary responsibility for Quebec over manpower and economic development. Quebec should also have the right to take part in appointing Quebec judges to the Supreme Court and the exclusive right to appoint judges to the Quebec superior courts.

In my opinion, this second set of proposals establishes a long-term political agenda, identifying major objectives which would reinforce the concept of special status.¹⁵ The distinct status for Quebec, which would be acknowledged if the primacy of the Quebec Charter of Rights were accepted, would be complemented by a special distribution of legislative powers favouring Quebec. In this way, the special status of the Quebec government would be affirmed. Thus the distinctiveness of the Quebec people would underpin a special constitutional status encompassing socioeconomic and political areas and not simply cultural affairs.

A few comments should be made here. As a political agenda, this second set of proposals includes issues which are certainly subject to negotiation. However, I really cannot foresee discussions beginning on these points, much less being brought to conclusion. Moreover, I am uncertain of the nature of this special status; certain terms used in the Quebec proposals are ambiguous. For example, Quebec is described as the "maître d'oeuvre" in the economic realm. Normally "maître d'oeuvre" means a foreman or project manager. One wonders whether a genuine decentralization of decision-making authority is envisaged, or merely the delegation of administrative responsibilities.¹⁶ The difference is a significant one. Lastly, there is reason to wonder why negotiations would ever take place on the second set of proposals, and, more importantly, why Quebec would receive what it wants.

THE GREAT DELUSION

These constitutional proposals seem very abstract in relation to current political life in Canada; they appear intangible, no doubt because they are based on a great delusion. Quebec's hopes are vain in at least two respects.

To begin with, the proposals ignore the distribution of political power which is inevitably at the heart of all constitutional negotiations. This is made even more absurd by the fact that the PQ government focused the 1980 referendum campaign on this issue of the political strength of Quebec in Confederation. The referendum was supposed to change the power relationship. The Quebec government's 1979 document, entitled *Quebec-Canada: A New Deal*¹⁷, stated that a "yes" in the referendum would be "an element of greater consequence, more decisive than all the files and protest meetings and public statements" (p. 76), and that "... recourse to the referendum technique will change the bases and conditions of the Canadian political debate" (p. 76). This major new weapon seems to have backfired; however, all previous Quebec governments saw the need to arm themselves with additional ammunition, whether by mobilizing public opinion or playing the card of separatism.

At first glance, one would think that the current urgency of the constitutional question, as well as the apparently more favourable political climate stemmed from a few statements by Prime Minister Mulroney. This would be a rather naive conclusion. It's as if such general statements could really commit the federal government to specific changes. Or as if a number of provinces, just because they have Conservative governments, could be bound by such declarations.

Initial reactions outside Quebec are fairly revealing. To use an analogy, the Canadian family does not appear ready to kill the fatted calf at the return of the prodigal Québécois son. Even the federal government, while making noises to the effect that anything is possible, is not in much of a hurry to get the process started. In reality, a provincial government that is expected to lose in the next election carries very little weight.

In short, I do not see what, from Canada's perspective, could impart a sense of urgency to the constitutional question, or what could compel Canada to open negotiations with the present Quebec government. Nor do I see why the federal and other provincial governments should accept the proposals made by Quebec. In conclusion, I find it hard to

believe that these governments will back down significantly regarding the Canada Bill either before or after the next Quebec election.

The second respect in which Quebec's approach is based on self-delusion is that not much attention has been paid to the treatment given in the past to Quebec's traditional constitutional position. In the draft agreement, the government states that it has refrained from reviewing the background to the constitutional debate so as not to add fuel to the fire. But this also prevents the government from saying why its proposals, which "follow in the tradition of all previous Quebec governments",¹⁸ should be greeted more favourably. Overall, the draft agreement supports the proposal for special status, completely in line with the P  pin-Robarts Commission, almost as if this concept were new to the constitutional disputes. However, in *Qu  bec-Canada: A New Deal (1979)*, this same government criticized special status as an illusion: "The idea, fashionable during the 'sixties and taken up again with certain variations, seemed to have the advantage of answering a good many of Quebec's aspirations... But this solution was quickly rejected by English Canada, which was opposed to Quebec's possible acquisition of powers denied to the other provinces." (p. 45). The latest idea seems to be the same old illusion under a different name!

The bubble of illusion under which the Quebec government is labouring, and which it maintains, has not been punctured by the federal government. Probably it will not be at least until after the next election, although nothing concrete will likely be done about it in the meantime. After all, Prime Minister Mulroney stated on 29 May 1985 that negotiating the proposals with Quebec would be a long and complicated process, that he was not sure now would be the most propitious time to begin and that, for the time being, he preferred to react to them only in a general way. In view of this, I wonder to whom the Draft Agreement on the Constitution is addressed.

AN APPEAL TO QUEBEC VOTERS

The Quebec government's draft agreement is a political manoeuvre intended mainly for domestic consumption and scheduled for pre-election release. Although this paper is addressed to the federal and provincial

governments, it is also intended for the people of Quebec. It has both an external objective – the constitutional negotiations – and an internal objective – the definition of a constitutional program, with the stamp of federalism, to beat the official opposition on its own turf.

Since the Parti Québécois decided officially in January 1985 that sovereignty was a remote political possibility, its constitutional program has been full of holes. But the May 1985 proposals do give the government the program that it has been missing and, as a result, a coherent political platform. It has two advantages: first, the approach is federalist (“These proposals ... fit into the federal framework of the present Constitution”); and second, it is in keeping with the government’s traditional position. It stresses nationalism while transposing it into a claim for provincial autonomy.

This “federalist option-provincial autonomy” mixture, which has always been effective within the province, threatens the position of the Quebec Liberals and attempts to put the official opposition on the defensive. The government has taken malicious pleasure in borrowing several Liberal policies, although in many cases giving them a different perspective. This has led Mr. Bourassa to declare that he agrees with 18 of the government’s 22 proposals.¹⁹

However, appearances can be deceiving. To begin with, similarity of form does not mean similar content as well.²⁰ For instance, the Quebec government claims that recognition of the Quebec people involves not only cultural but socioeconomic and political considerations as well; therefore the province requires special status. The Quebec Liberals, on the other hand, insist primarily on cultural powers. The difference between the two parties is that they have different ideas about what is necessary to safeguard Quebec’s distinctiveness. There are also, fundamentally, points of actual disagreement. The differences between the two parties are more pronounced in the main points of the first set of proposals, aimed at neutralizing the Canada Bill. In effect, for the Quebec Liberal Party: the Quebec people are a cultural entity; the Canadian Charter should have primacy (the Liberals thus support its articles on language of instruction and the principle of the Canadian economic union); concerning the amending formula, the

right of veto should be granted for all matters. In the second series of proposals, there seem to be more areas of agreement between the two parties. But this is an area that does not compromise, to the same degree, the idea of Quebec's distinctiveness.

It seems obvious that the debate the PQ wants to launch either in the National Assembly or in the public forum aims to accomplish two things: first, to portray the Liberals' stance against federalism as a timid one; and second, to ask the Quebec public which brand of federalism it would rather have (that of the Liberals or of the Parti Québécois). The PQ must therefore give itself some ammunition to deal with the constitutional problem while making it a major theme of the election campaign. Mulroney cannot very well reject the Quebec proposals in the coming months, and the Quebec government will be looking for a sign from Canada to give their initiative some credibility.

COMPROMISING THE FUTURE?

By way of conclusion, I must admit to being deeply skeptical and fairly pessimistic. It is difficult to imagine that the other provincial governments and the federal government will back down significantly over the Canada Bill, whether by agreeing to exempt Quebec from it or in any other way. It would be just as surprising if the other governments agreed, with goodwill or otherwise, to give Quebec special status, particularly when the distribution of political power has never been as unfavourable to Quebec.

If it becomes possible to discuss an agreement, and if the Quebec government officially signs the Canada Bill, it will certainly not be the result of Canada's giving in, as is presently hoped. The principles that have historically been defended by the Government of Quebec will probably have to be abandoned; this is the concession that it is feared Quebec will be forced to make. A Bourassa government would feel more at ease in making such a concession since, aside from supporting Quebec's claim of a universal right of veto, the Quebec Liberals have attached fewer conditions to their acceptance of the Canada Bill.

The provincial Liberals view Quebec's identity from a cultural standpoint; they speak of a distinct society, much like Trudeau's vision of a sociological nation. Thus, the first condition for acceptance set out in their platform (recognition of Quebec as a distinct society) is accompanied by a demand for control over immigration, intended primarily as a cultural safeguard. With respect to federal institutions, the Liberals call for participation by Quebec in selecting Supreme Court judges and they support a limit on the federal spending power. As for the amending formula, they naturally demand a full veto, but they have said that it will not be easy to regain lost ground, and have hinted that the right to opt out with compensation is a lesser evil. The Liberals could give in on this issue and cover themselves politically by alleging that it was impossible to regain the veto lost by a heedless PQ government. Exclusive jurisdiction over language policy is not one of their conditions for signing the Canada Bill, and acceptance of the Canadian Charter of Rights and Freedoms means approval of the principle of Canadian economic union. The Liberals are keen to improve inter-provincial relations, particularly with respect to strengthening the Canadian economic union. One way would be to prepare an inter-provincial code of ethics. The Liberals have definitely attached fewer conditions for acceptance of the Canada Bill!

However, a PQ government could also end up making comparable concessions. We have become used to twists and turns of Parti Québécois policy and to reversals on major issues.

In the face of this political duel which is dominating public affairs, a number of organizations have banded together to state their opposition to the government's proposals and insist on the need to have the Quebec people's right to self-determination formally recognized. This group, the Coalition pour l'indépendance du Québec, consists of the three major union organizations – the Confederation of National Trade Unions, the Teachers' Federation, and the Quebec Federation of Labour – the *Mouvement national des Québécois*, the *Mouvement socialiste*, the *Rassemblement démocratique pour l'indépendance* and others. This opposition group is based outside the National Assembly and includes organizations that are not essentially political in nature. Even though the election system leaves little room for small political

groups, perhaps they will make their dissenting voice heard through the social visions of various political theories and express a current of thought deeply rooted among Quebecers, which ranges from an essential and substantial increase in the real power of the Quebec government right up to independence.

In conclusion, many people feel that to avoid compromising the future position of Quebec, whichever party negotiates a constitutional settlement should tie the recognition of Quebec's character as a distinct society to the right of self-determination, in such a way that a link is officially established between this guarantee for the Quebec people and the UN Declaration of Human Rights. This basic demand, which the PQ government has left by the wayside, would guarantee the possibility of someday breaking free of the mortgage that the political parties, concerned primarily with political opportunism, are prepared to accept without receiving much in return.

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- * The Institute of Intergovernmental Relations is grateful to the Federal-Provincial Relations Office, Government of Canada, for assistance in translating the text from the French. The final version of the translation is the responsibility of the Institute of Intergovernmental Relations.
 - 2 Government of Quebec, *Draft Agreement on the Constitution*, Quebec, May 1985, p. 32.
 - 3 At the PQ convention held in June 1984, a resolution was passed to fight the next election mainly on the issue of Quebec sovereignty. A vote for the Parti Québécois would mean a vote for Quebec sovereignty.
 - 4 National Assembly, *Journal des débats*, Vol. 28, No. 1, 16 October 1984, p. 23.
 - 5 The June 1984 resolution was amended to state that the fundamental objective of the Parti Québécois was to achieve sovereignty for Quebec.
 - 6 My articles: "Vers une redéfinition des lieux d'exercice du pouvoir d'État au Canada", *Cahiers d'histoire*, Vol. II, No. 1, Université de Montréal, 1981, pp. 11-30; "Le Québec et la centralisation politique au Canada, le "beau risque" du Canada Bill", *Cahiers de recherche sociologique*, Vol. 3, No. 1, Université de Québec à Montréal, April 1985, pp. 119-139.
 - 7 In the official letter from Premier Lévesque to Prime Minister Trudeau, stating that he intended to exercise his "veto" over the constitutional accord from which Quebec was excluded, Mr. Lévesque pointed out that the motion put before the National Assembly represented the absolute minimum Quebec required to protect its special nature and its rights. National Assembly, *Journal*

des débats, Quebec, Vol. 26, No. 9, 25 November, 1981, p. 463; Vol. 26, No. 12, 1 December 1981, p. 605. We are analyzing the principles of this motion here. In the next section, we will compare the motion with certain aspects of the present Quebec proposal; our observations will also be included in these notes.

- 8 *Op. cit.*, p. 35.
- 9 Several changes were made to the motion of 1 December 1981. Initially, the motion was based on the principle of the Quebec people's right to self-determination; however, in the present draft agreement, the Lévesque government states in the introduction – not in the proposals themselves – that the proposals do not alter the inalienable right of the Quebec people to self-determination. Until 1981, the Lévesque government stated that recognition of this right had to figure in any preamble to the constitution. The wording also changed: two basically equal founding peoples became a Canadian duality with special needs; reference to Quebec as a distinct “nation” disappeared, leaving only the concept of the Quebec people, as integrators of their own minorities.
- 10 Quebec governments had traditionally insisted that an agreement on the division of powers be reached before the constitution was repatriated. The momentum which began to grow in the summer of 1980 at the time of Trudeau's initiative, and which the Lévesque government grudgingly accepted, was in the opposite direction from this longtime Quebec requirement. In its proposals, the present Quebec government adopts the order of items imposed previously by Trudeau; therefore, the division of powers seems to figure in the second stage of discussions. It is certainly no longer the starting point for an agreement to accept constitutional reform.
- 11 In 1981, the government accepted a Canadian Charter after opting out of parts of it and subordinating it to Quebec laws in areas of the province's jurisdiction.
- 12 The constitutional validity of this law is now being challenged before the Court of Appeal.
- 13 These are two major concessions which would involve making Quebec's exclusive responsibility over language policy subject to conditions and constraints that concern the operation of institutions and minority language education.
- 14 Claude Morin, “Retrait ou veto: de quoi s'agit-il?”, *Le Devoir*, 13 February 1985, and “Veto ou retrait : quelques considérations pratiques”, *Le Devoir*, 14 February 1985; Gérald-A Beaudoin, “Le veto et le retrait: esquisses d'une solution”, *Le Devoir*, 23 January 1985; Louis Dussault, “Le droit de veto et le droit de retrait”, *Le Devoir*, 20 February 1985; Gil Rémiliard, “À quelles conditions le Québec peut-il signer la Loi constitutionnelle de 1982 (2) La formule d'amendement”, *Le Devoir*, 27 February 1985.

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- 15 A close comparison with Quebec's traditional claims would show that the proposals of the Lévesque government are far from extreme; they are much more moderate in many respects. For documentation useful in making this comparison, see the study of Quebec's demands from the Duplessis era to 1982 by Andrée Lajoie, Pierrette Maluzzi and Michelle Garnache, "Les idées politiques au Québec et l'évolution du droit constitutionnel canadien, 1945-1985", in *La Cour suprême du Canada comme instrument du changement politique*, Vol. 47 in the appendixes to the report by the Macdonald Commission, published in the fall of 1985.
 - 16 There seems to be some ambiguity in the proposals regarding "maître d'oeuvre" and "responsabilité première": "First, the Government of Québec insists that it should have the primary responsibility [être maître d'oeuvre] for the formulation and implementation of general economic policy in Québec." Later, the document states: "The Government of Québec insists, therefore, that its primary responsibility [responsabilité première] be recognized in the matter of the general direction of its economic development and that of its regions." Government of Quebec, *op. cit.*, p. 28.
 - 17 Government of Quebec, *Québec-Canada: A New Deal* (Quebec: Service des publications officielles, 1979).
 - 18 Government of Quebec, *Draft Agreement on the Constitution*, p. 6.
 - 19 "Constitution: tout n'est pas négociable", *Le Devoir*, 22 May 1985, p. 1. This was a generous assessment by the Liberals. The reaction outside Quebec was the opposite: the document was labelled crypto-separatist. Two points should be added. First, this assessment (agreement with 18 of the 22 proposals) is generous and free. Second, it was not necessarily based on a careful comparison of the texts produced by the government and the opposition, and ignored the notable differences illustrated in the following paragraph.
 - 20 Parti libéral du Québec, *Maîtriser l'avenir, Programme politique*, Montreal, 1985.