THROUGH A GLASS, DARKLY: THE MEECH LAKE MIRAGE

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The Constitutional Accord of June 3, 1987 – commonly known as the Meech Lake Accord, despite differences between the agreement in principle of April 30, 1987, and the text of the constitutional document drafted in Ottawa a little over a month later – lends itself to a number of wide-ranging considerations[1].

I think it safe to say that a new dynamic has now entered federal-provincial relations. Whether we like it or not, it looks as though the rules of intergovernmental politics will have to be changed. Take, for example, the need for negotiation between the two levels of government on the appointment of senators and Supreme Court judges, or, for that matter, recognition in the amending formula of the right to opt out, with compensation, of national shared-cost programs.

The issue can be looked at from another angle, however. Without the Constitution Act of 1982, otherwise known as the Canada Bill, which the Quebec government did not support, there would have been no basis for the negotiations that brought the first ministers to Meech Lake in the spring of 1987. I am going to take a closer look at this aspect by asking the following question: exactly how did the Constitutional Accord of June 3, 1987 make it possible for Quebec to support the Constitution Act, 1982 *«dans l'honneur et l'enthousiasme»*? To begin with, we will have to look very closely at the content of the Meech lake Accord in the light of its potential impact on the Quebec community. Then we will have to determine exactly to what degree the Accord makes it possible to support the Canada Bill.

AN IMPORTANT STEP

Constitutional reforms such as those of 1982 and 1987 (assuming eventual provincial ratification), are very special moments in the history of a country and the various peoples that inhabit it. Such reform redefines who exercises political power and where, as well as shaping the institutional framework of such power and giving preference to a particular form of intergovernmental relations.

It is therefore important not to underestimate the seriousness of this major political step. There is a tendency in Quebec to dismiss it as just part of the political game. Such an attitude is based on a double confusion. In the first place, negotiations to amend the constitutional framework are not just a matter of short-term horse-trading, although this is the view adopted by government. The limited number of changes made to the Canadian Constitution (once all the provinces had been constituted), shows that this is a far cry from routine procedure. More serious still is the fact that, in Quebec, the matter is being debated as though its object and scope were necessarily confined to the juridical dimension. The number of constitutional experts called before the parliamentary commission in Quebec left little room for the non-jurist.

Of course, assessment of the Accord must be based on legal considerations, and this dimension is clearly an important one. Basically, however, we are dealing with a political process. It is a question of defining the framework within which power is to be exercised and political life organized – of determining collective and individual rights, the jurisdictions of the two major levels of government, and the institutions through which democratic rights will be expressed. In this sense, political analysis certainly sheds a useful light on some of the issues at stake.

It might be interesting to speculate on whether changes in the political scene have made a significant difference in bringing about the Meech Lake Accord. The nature of the present political incumbents in Ottawa and Quebec seems to have helped the negotiations. Subsequent turns of the political wheel, combined with delays in the ratification of the Meech Lake Accord, might prove to be its downfall.

Leaving aside conjecture, however, let us recall that between 1985 and 1987 the Quebec government was rarely so accommodating or undemanding. Robert Bourassa's objective was to get Quebec to support the Canada Bill while laying down conditions that presupposed the other governments' willingness to agree. Moreover, just prior to Meech Lake, Brian Mulroney made a point of telling the first ministers of English-speaking provinces that Quebec's proposals had never been so moderate and that it would be highly advisable to seize a possibly unique opportunity. On the other hand, rarely in the course of recent history has the Quebec government had a chance to benefit from such ineffective parliamentary opposition on the one hand, and general disarray among groups that might form an extra-parliamentary opposition on the other. The Meech Lake Accord, to which Bourassa agreed, accurately reflects this combination of factors in its ambiguity, the dangerous precedents that it sets, and its acquiescence to the principles of the Canada Bill.

Before proceeding to a closer examination of the Meech Lake Accord, it is important to bear in mind the five conditions set by Quebec:

- explicit recognition of Quebec as a distinct society
- guarantee of increased powers in immigration
- limits on federal spending powers
- recognition of a right of veto
- Quebec participation in appointing judges to the Supreme Court of Canada (Remillard, 1987: 56-57).

DISTINCT SOCIETY: WHAT ARE WE TALKING ABOUT?

The cryptic term "distinct society" can mean a great deal or nothing at all. Some people feel it would be wiser to define the expression clearly whenever it is used. Government and certain jurists prefer not to be specific, however, since "enumeration in an article of law always imposes limitations" (Beaudoin, 1987: 80). Nevertheless, two considerations arise regarding the way in which the term is employed.

The use in a constitutional document of the notion of a distinct society which has no actual existence in law is, in fact, a rejection of the notion of people. However, in the words of a group of Quebec constituents, "practice and international law have clarified the notion of people as also being defined through culture and institutions" (Arbour et al.,1987: 169). The provincial Liberals have therefore refused to include in their proposed conditions any reference to recognizing Quebec's right to self determination. The Bourassa government has deliberately banished the notions of people and self-determination from its vocabulary. In his use of vague terminology, Bourassa is hoping that the courts will put muscle into the notion of a distinct society by a wide interpretation that will give the Quebec government greater powers.

Let us look beyond such limitations and hopes as may be vested in the expression "distinct society," however, and consider, as we must, its meaning and scope as given in the official version of the Meech Lake Accord. It is a principle of law that a clause must be interpreted in context, that is to say, in relation to other pertinent clauses. For example, the Meech Lake Accord recognizes that "Quebec constitutes within Canada a distinct society" (s.2.(1)(b)). This second sub-paragraph must be read in the light of the first, however, which defines Quebec as the place where French-speaking Canadians are "centred" and where English-speaking Canadians are "present" i.e., in the minority. The rest of Canada is defined in similar terms, emphasizing the preponderance of English Canadians "concentrated outside Quebec." The distinct society thus refers to Quebec's internal linguistic duality as well as its French-speaking majority. We therefore have a distinct society defined on the level of language. Linguistic duality is seen as a fact of life in Quebec, but with this difference: its majority language is the minority language in the rest of Canada.

The Accord recognizes that linguistic duality is a "fundamental characteristic of Canada," whereas the distinct society, which seems to be the reverse of the linguistic majority, is not similarly recognized. No matter from what standpoint the distinct society in Quebec is considered, therefore, it can never be a "fundamental characteristic" of Canada. This expression refers only to linguistic duality, a reference

that recurs a few lines later: "The role of the Parliament of Canada and the provincial legislatures [is] to preserve the fundamental characteristic [of linguistic duality]."

The introduction of this new criterion for interpretation has raised high hopes. The question is worth a closer look. Nicole Duplé, who shares the government's views on this point, has stated that "Quebec will undoubtedly have more room for manoeuvring ... to protect and consolidate its linguistic and cultural characteristics" (Duplé, 1987: 101). The government has gone so far as to mention possible confirmation of Quebec's role on the international scene.

Is this a reasonable optimism? Let us put it in perspective. It should be noted that a principle of interpretation is not a strict or binding rule. It is therefore difficult in individual cases to anticipate what real impact it might have on judicial decisions. Interpretations in our judicial system tend to restrict rather than extend the scope of legislation. Politicians cannot force the courts to give a decisive significance to a principle of interpretation. Furthermore, the Constitution contains several principles of interpretation and there is no way of knowing how they will adjust to one another in practice (Côté, 1987: 145-146).

On the last point, it is possible to compare in turn the distinct society, linguistic duality, multicultural heritage, and individual liberties. Moreover, any measure that limits freedoms must dearly indicate its reasonable and justifiable nature in a free, democratic society, as outlined in section 1 of the Charter of Rights and Freedoms in the Canada Bill (Woehrling, 1988: 145-146).

This raises several questions. Taking into consideration the fact that the Quebec government has now adhered to the principle of preserving linguistic duality in Canada generally, does the notion that the distinct society is "linguistic duality reversed,"so to speak, provide a further, compelling argument for recognition by the Supreme Court of the constitutionality of the Quebec Language Charter? By the same token, we must remember that the whole point of the Meech Lake Accord was to get Quebec to adhere to the Canadian Charter of Rights and Freedoms in the Canada Bill. For all intents and purposes, this document only establishes individual rights, and its main thrust

is based on the notion of the individual *per se*. One may wonder, therefore, whether the idea of "collective rights" connected with the notion of the distinct society will have the effect of neutralizing a constitutional charter that only provides for individual rights. In this sense, it must be proven that the promotion and protection of Quebec's distinct character limits individual rights. Take the question of the language of signs, for example. Does the protection and promotion of the distinct society obstruct individual freedom of expression? For the moment it's anyone's guess, although it would be very naive to think that the distinct society, as a principle of interpretation, could radically change the thrust of the Canadian Charter of Rights and Freedoms, solely on the basis of legal reasoning.

Ironically enough, as the work of the parliamentary commission advanced, the Quebec government came to realize that the first section of the draft amendment to the Constitution proposed by the Meech Lake Accord might well undermine its jurisdiction in cultural and linguistic matters. This article states, in effect, that the interpretation of the Constitution must accommodate not only linguistic duality throughout Canada, but the distinct nature of Quebec society as well. However, in the event of a conflict between linguistic duality and the distinct society as criteria for legal interpretation, linguistic duality would take precedence simply because it is a fundamental characteristic, contrary to the distinct society. Such an outcome could put into question the Quebec political trend toward making French the language of business and daily life, for example.

Faced with threatened erosion of Quebec's jurisdiction over language and culture, Robert Bourassa made sure that an "escape clause," as he called it, was included in the final agreement. It sets out in detail that nothing in the section on linguistic duality and the distinct society "derogates from the powers, rights or privileges of Parliament ... or of the legislatures or governments of the provinces." In other words, the section in question cannot diminish Quebec's powers. This hardly seems to be a major constitutional breakthrough! However, the Quebec delegates cried victory because the their province's jurisdictions would not be reduced. But if politicians must go to these lengths merely

to maintain the status quo, we might feel justifiably skeptical about their ability to gain broader powers.

THE BIRTH OF A NEW "FOUNDING MYTH"

The Quebec government claims that the recognition of the distinct society will result in the Supreme Court granting new powers to Quebec or upholding a wide interpretation of present powers. The rhetoric involved implies that we are witnessing the birth of a "founding myth" of Canadian federalism.

The need for fresh constitutional rhetoric should surprise no one. In the course of the last ten years we have watched the destruction of several "founding myths" that struck a responsive chord in Quebec. These included Quebec's political and juridical veto, the two nations pact, and the federal government's inability to act unilaterally. I am speaking of the distinct society in terms of the new "founding myth" because it feeds constitutional rhetoric and claims to make possible what is not. It breeds contention in the name of this new "banner" – a banner whose innocuous nature will be revealed by subsequent defeats in the courts.

The following example is a good illustration of the distortions that can result from this rhetoric about the distinct society. Journalist Jean-Pierre Proulx has written a long article (1987:131-135) saying, in essence, that even if the distinct society is not defined, the people of Quebec know what it means. He goes into copious detail – citing great editorial writers of the past, the reports of the Tremblay Commission, the Laurendeau-Dunton commission, the Pepin-Robarts Commission, and other documents – in order to demonstrate that continual mention is made, if not of the notion of the distinct society, at least of the reality behind it. This is all very interesting, but not much to the point. One can no doubt say, today, that Quebecers "have at least agreed on the profound meaning of this expression." Only yesterday, however, one could have said Quebecers were agreed on the meaning of the two nations pact. We are indeed in the realm of "founding myths" and the kind of discourse typical of political process.

Proulx is on more relevant ground when, at the very end of the article, he emphasizes that "on the day when Supreme Court judges are called upon to decide what 'society' means," they "will have to judge between the version of the attorney general of Quebec and the attorney general of Canada, if not the attorneys general of all the provinces." When that time comes, judges are less likely to base their decisions on an editorial or a proposal made by a commission of inquiry whose report is gathering dust in some archive, than on the actual text of the Constitution, which recognizes a "national" federal government in relation to a people composed of citizens enjoying individual rights. There should be no conflict between these rights and an interpretation that acknowledges the fundamental characteristic of Canada – that is, linguistic duality – as well as the existence of a distinct society, and a multicultural heritage.

As a final remark on this question, I should point out that, in the constitutional debate of the past twenty-five years, people have always tended to state the obvious: a special community resides in Quebec – one special with regard to language, culture, history, institutions, and socioeconomic development. While this special quality could be recognized, any attempt to give it political expression by assigning the Quebec government a special role, unusual powers, or some other distinctive mark has been rejected. Trudeau, for example, felt that since francophones live all over Canada as well as being concentrated in Quebec, and since anglophones form part of the Quebec population, it was out of the question to give Quebec a special role of any kind.

Nevertheless, the present agreement reveals a breakthrough in the approach to constitutional matters. Section 1.(3) of the draft amendment states: "The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec... is affirmed." As things stand at present, however – and as I have tried to show – the actual effect of this affirmation appears uncertain and limited. Indeed, it might have the opposite effect of what was intended. All in all, the introduction of the notion of a distinct society represents a symbolic breakthrough. It might influence the progress of other negotiations, but it could equally well end up as a durable but meaningless symbol.

POLITICAL OPTING OUT, OR THE VIRTUES OF GOVERNMENT BY JUDGES

Robert Bourassa's method has been to say, in essence: Let's get a principle of interpretation for the Constitution. From this principle will flow, via "juridical reasoning," significant gains in areas where Quebec would fail if it used the normal political process.

Such a method amounts to an abdication of political responsibility. Bourassa is abandoning the fight in the political arena, where the elected representatives control or are at least responsible for their actions, in favour of the courts, which will impose hypothetical decisions on the electorate whether it likes it or not.

Such a proceeding strengthens the system of government by judges introduced in the Canada Bill. It amounts to a subversion of the democratic process. As the jurist Guy Tremblay has mentioned, "the vast majority of Western countries ... do not submit the policies of the people's elected representatives to the vagaries of judicial confrontation" (1987: 109-110). In the present case, it is carried a step further by introducing a criterion of interpretation designed to push through major constitutional gains in several areas. It is up to the judges to tell us the real meaning of legislation, thus gladdening the hearts of some and satisfying the skepticism of others. From now on, it would seem, the courts will pronounce on Quebec's claims regarding shared jurisdictions, because it is a foregone conclusion that these claims will be rejected in the political arena.

From this point of view, although politicians may be abdicating responsibilities that ought rightfully to be exercised by elected representatives, they are also attempting to avoid probable failure in return for a symbolic, short-term victory. Such a victory does not affect the underlying question; it merely cedes to others the responsibility for decision-making in the hope of hypothetical and improbable gains in an area where elected representatives have no control.

WHAT VETO?

During the last year of the Levesque government, Robert Bourassa campaigned on Quebec's need to recover the right of veto in constitutional matters. He was inflexible on this question, despite the Utopian nature of his demands. It was in fact unlikely that the provincial governments, which had been granted legal equality in the amendment procedure of the Canada Bill, would consent to unequal status as expressed in the Victoria Charter, for example, which granted a veto to Ontario and Quebec.

Despite his intransigent rhetoric, Bourassa made sure he had a fallback position. Quebec Liberal Party documents of 1985 mention that it "would not be easy to regain lost ground," and let it be understood that the formula for "withdrawal with compensation" would be a lesser evil. In this regard,1concluded in an earlier paper (Boismenu, 1985: 58) that Bourassa could always say it was impossible for him to recover the right of veto lost by a careless PQ government.

As one might expect, it was reasonably easy for Bourassa to agree to the formula of withdrawal with compensation for constitutional changes that involve a "transfer of provincial legislative powers to the federal Parliament." Bourassa is an amazing man, all the same. Rather than bow to the inevitable, he converted the withdrawal formula into a right of veto, against all likelihood. Nevertheless, here as elsewhere, erroneous ideas cannot be made true merely by repeating them *ad nauseam*.

Understandably, the right of withdrawal with compensation changes the political dynamic and gives the provinces additional arguments for future negotiations in terms of cold, hard cash. Quebec, like any other province, could oppose a change that might lead to loss or shrinkage of one of its powers, and decide to maintain the status quo for itself alone. However, despite semantic shifts, the ability to oppose a measure is still not synonymous with a veto (see Decary, 1987: 71). The formula was advocated by the Pepin-Robarts Commission and adopted by the Parti Quebecois government and the seven other provinces initially opposed to the Canada Bill. Quebec will probably make the most use of it, but it remains an instrument of negotiation for every province.

There is, nevertheless, another area where constitutional veto is possible. The Canada Bill provides for two procedures to change the institutions of the Canadian federation. Certain limited matters require unanimous consent (the monarchy, provincial representation in the House of Commons, and the composition of the Supreme Court). Other cases require the usual proportionate consent of seven provinces and fifty percent of the population. However, the Meech Lake Accord has, for all practical purposes, retained the rule of unanimity for all institutions. The consequence is clear: each province now has a real veto on changes touching the Senate, the Supreme Court, the creation of a province, or the addition of territory to any province. Commentators one and all remarked on the unwieldiness of this procedure and the added difficulty of making any change whatsoever. Here, too, the general dynamics of intergovernmental relations have been modified. The Quebec government could only acquire a veto if it were granted to all provinces, and so the measure was incorporated into the Accord. In other words, given the rule of unanimity, Quebec has a veto -but so do all the other provinces.

In sum, the initial demand for a Quebec right of veto based on its specificity resulted in legal equality for all provinces in this area. As Lowell Murray wrote, "The requirement of unanimity is just and reasonable. It is reasonable because it respects the principle of provincial equality regarding decisions about our major national institutions. It is just because it offers each of the provinces equal protection on questions touching their place within the federation. There will not be two categories of provinces in Canada" (1987: 386).

THE POWER TO SET STANDARDS

In 1964, the Quebec government finally obtained a right of withdrawal with financial compensation from a whole series of shared-cost programs. This agreement provided for a transition period to two to five years during which the programs would remain unchanged. The period was later greatly extended, but more autonomy within pan-Canadian standards was gained. Quebec has always been concerned about occupying areas

of jurisdiction that, contrary to the divisions of power set forth in the Constitution, have been taken over by the federal government.

The Meech Lake Accord stipulates that a provincial government which "chooses not to participate in a national shared-cost program ... in an area of exclusive provincial jurisdiction" must receive "reasonable compensation ... if the province carries on a program ... compatible with the national objectives." This acknowledges what all previous Quebec governments had condemned and rejected: the idea that it is normal for the federal government to intervene in the field of exclusive provincial jurisdictions.

This acknowledgement is fraught with consequences. In the first place, it is a major step for a Quebec government to accept the idea at all. Furthermore, the expression "exclusive jurisdiction" no longer means anything. If jurisdiction was at one time exclusive, then a provincial government that rejects federal intervention has a right to withdrawal with compensation within certain limits. But, beyond this compensation "to the initial occupant," to speak of exclusive provincial jurisdiction is in itself an abuse of language. The "functional federalism" which some people have been heartily wishing for has at last been enshrined.

In the final analysis, one may well wonder whether it is simply a question of giving formal expression to past agreements, especially those made since World War II, or whether, on the contrary, jurisdictions have actually changed.

It should be noted that federal spending powers in provincial jurisdictions are "not among our constitutional rights" (Lajoie, 1988: 164), as there is no clear judicial opinion on this subject. This is explained at least in part by the fact that federal and provincial governments have not taken their differences to court in the past. Furthermore, there exist two opposing doctrinal views," one justifying the federal position, the other favouring protection of provincial powers. Each of these views is presently upheld by a judge sitting on the Supreme Court (Judges Laforest and Beetz).

One can argue that the federal government's power to intervene in provincial legislative jurisdictions is offset by the right or withdrawal

with compensation. Of course, it is permissible for a provincial government to opt out while obtaining compensation, but only if the province sets up a program comparable to the one from which it has withdrawn – a program that must be "compatible with the national objectives." It means that, in future, provincial legislative jurisdiction may be subordinated to conditions set by the federal cabinet. This prospect moved Andrée Lajoie to write, "The fact that legislative jurisdiction is the only area expressly mentioned means that (the Constitutional Accord) does not aim at maintaining shared executive powers *ante quo*, but, on the contrary, allows for the extension of federal executive powers at the expense of provincial legislative powers, in what is a new form of oblique transfer" (Lajoie, 1988: 176).

The net result is that the federal government is consecrating both its spending power in federal jurisdictions, and its power to establish the standards of "autonomous" programs. For the provinces, the Accord means that shared jurisdictions limit their initiative in certain areas, while the federal government has the right to intervene wherever it wishes, even in provincial jurisdictions. Speaking as an observer in May 1987, Jacques Parizeau made the following remark: "As a means of limiting the federal government's spending power, it is utterly absurd. Mr. Lesage must be turning in his grave" (Parizeau, 1987: 179).

As a footnote, let me add that the "constitutionalization" of spending power may change the dynamic of federal-provincial negotiations, but certainly less so than some fear. It must be remembered that previous shared-cost programs such as health insurance had few participants initially, and that it took several years for all provinces to become involved. The danger may be, however, that along with a changed dynamic, governments may embark on court battles that they have avoided thus far. Several issues arise in this regard (Lajoie, 1988: 179; Leslie, 1987: 117). For example: When is a program "national," and who decides this? Does the modification of an existing program mean that it is a new program? Are the conditions laid down for financial compensation unduly restrictive? Is financial compensation fair?

WAR WITHOUT TEARS

Since the mid-sixties, the Quebec government has traditionally subordinated constitutional agreements to the results of negotiations on shared jurisdictions. In 1970-71, Robert Bourassa used negotiations on jurisdiction as a test case to show that it was possible to make progress through negotiation. At the time, he sought recognition of provincial supremacy in social security policy. At Meech Lake, although he refrained from symbolic brandishing of this precedent, he attacked the way in which jurisdiction was shared in immigration matters.

The scope and difficulty involved in making gains in immigration jurisdiction were minimal compared to the health insurance negotiations. The latter did indeed set a precedent, given the strongly divergent positions involved. This time, however, Bourassa chose as his ground the constitutional implementation of an existing administrative agreement. He asked that Quebec be guaranteed a minimum proportion of immigrants, and that his province take over services for reception and integration of foreign nationals wishing to settle there. Admittedly these are fairly important gains, but they can hardly be viewed as the result of a prolonged and glorious struggle.

Bourassa's insistence on negotiating immigration matters is no doubt due to the acute problem of Quebec's falling birthrate, as well as to an essentially cultural vision of the Quebec issue. There is another consideration however. The Quebec strategy consisted not in arguing the most strategic points touching the province's jurisdiction, but only those likely to lead to a signed agreement. With the Cullen-Couture administrative agreement in his pocket, Bourassa viewed the matter of immigration, which is by definition an area of shared jurisdiction, as a fairly easy target – much easier, certainly, than claiming exclusive jurisdiction in language matters, for example, or the non-subordination of Quebec jurisdiction in economic policy to the imperative of Canadian economic unity, or of arguing about who has greater jurisdiction in labour policy.

By the same token, there could be little serious objection to giving constitutional sanction to the presence of at least three judges from the Quebec Bar on the Supreme Court. It was merely a question of

institutionalizing what had become a traditional practice. While it was not without significance, it could not be called a major breakthrough. Here again, the strategy of the achievable, so to speak, takes priority. To paraphrase Corneille, "War without tears means triumph without glory."

SWALLOWING THE PILL

In all this discussion of the conditions set by Quebec, we tend to forget the primary object of the Meech Lake Accord, which was to get Quebec to support the Canada Bill. This was the pill beneath the sugar coating. The fact is, however, that none of these conditions makes any significant change to the general thrust of the Canada Bill.

This legislation, passed in 1982, altered the Constitution and put a number of blocks on provincial initiative. Let us look briefly at a few of them. The courts were given the power to watch over government initiatives. The rights of the individual citizen took precedence, thus placing restraints on the recognition and exercise of collective rights, notably for Quebec. Moreover, the federal government is seen as the sole repository of the collective interests of Canadians as a whole. Provincial powers are subordinated to the principle of Canadian economic unity, and the provinces are obliged to conform to precise parameters in language policy.

Quebec envisaged various ways of counteracting this imposed constitutional reform, beginning with a refusal to support to it. Although largely symbolic, this reflected a deep-seated disagreement with the terms of the Canada Bill.

Subsequently, on December 1, 1981, Premier René Lévesque stated in the National Assembly that he could only agree to constitutional change under certain conditions. The Lévesque government based its stand on the right of the Quebec people to self-determination and the fact that no change could be made to the Constitution without its agreement. It asserted that "the two peoples" must be recognized as "fundamentally equal." Moreover, within the Canadian federation, Quebec formed "a distinct society in its language, culture, and institu-

tions, and possessed all the attributes of a distinct national community." Quebec wanted either a right of veto or withdrawal with compensation included in the amendment formula. It would agree to a Charter of Rights and Freedoms that guaranteed unrestricted democratic rights and the use of French and English in federal institutions, as well as equality, the basic freedoms, and guarantees regarding the language of teaching for the minority, insofar as Quebec can "enforce its laws within its own jurisdiction."

In the spring of 1985, the Quebec government proposed a *Projet d'accord constitutionnel* whereby Quebec would support the Canada Bill on condition that the special nature of the Quebec people be recognized, although this would create a constitutional imbalance. Instead of accommodating itself to the Charter of Rights and Freedoms in the Canada Bill, Quebec asserted that the Quebec Charter of Rights and Freedoms should take precedence. This document ensures primacy of Quebec statutes dealing with the language of teaching and the movement of persons and assets. Quebec further asked for a right of veto for constitutional amendments to federal institutions. Regarding amendments affecting jurisdictions, it wanted either a veto or withdrawal with compensation. All in all, about fifteen of the Canada Bill's sixty sections would have remained intact.

Coming from a PQ government, such proposals may have seemed radical. Suffice it to say that they were very nearly what Jean Lesage might have put forward in 1965 (Boismenu, 1988). Looking back, we can see how wide a gap separates them from Bourassa's conditions for adhering to the Charter of Rights and Freedoms in the Canada Bill – conditions that have in common the fact that they make very little change and, in any event, do not address the essential issues. One may wonder at this juncture whether Quebec's political leaders have digested the 1982 defeat – in other words, the Canada Bill – to the point of upholding it without a qualm.

With regard to the Meech Lake Accord and its proposed amendments to the Canada Bill, there is a real possibility that the combined effect of agreeing to unlimited federal intervention (as contained in the section on spending powers) and the hope of favourable interpretations

in the courts (bolstered by the sub-paragraph on the distinct society) will lead to indefinite adjournment of negotiations on the sharing of constitutional jurisdictions. It may well be that, in the years to come, those in Quebec who advocate recourse to the courts and government by judges will be forced to admit – albeit in a suitably dignified and high-minded manner – their inability to turn the notion of a distinct society to significant advantage. As is customary in Quebec's history, they will retire to lick their wounds and concoct yet another founding myth for domestic consumption. In the meantime, the Canada Bill will have triumphed.

The Meech Lake Accord does not answer the objections made to the Canada Bill, nor does it follow the logic of Quebec's constitutional position since 1960. If it is impossible to resolve the problem of Quebec's adherence to the wide-reaching constitutional changes of 1982, it would be preferable to avoid commitment to something that is, for the moment, off to such a bad start. However, the Bourassa government is determined to settle this nagging issue, come what may. By way of example, it has persuaded the National Assembly to adhere to the Meech Lake Accord. If Quebec is to avoid the consequences of this constitutional blunder, it will be thanks to some English-Canadian government's refusal to fall into line.

Various groups, particularly in Manitoba and New Brunswick, have expressed reservations about the Meech Lake Accord. Some feel it does not cover enough ground. Others want individual rights to take precedence over all collective rights that may result (although this is unlikely) from the Accord. Although it is not immediately apparent, this is a further rejection of Quebec's proposed conditions. The rule of unanimity is the weak point that will make the whole house of cards collapse. There are two conclusions to be drawn from all this. Quebec will be indebted to a government in English Canada for a last-minute reprieve from a cut-rate constitutional undertaking that had very little to offer. Moreover, any such rejection of the Accord (clothed in lofty principles) by one or more English-Canadian governments will amount to a dismissal of Quebec's proposals – proposals that have never been so moderate. One cannot help feeling that the prospect looks pretty bleak for the Quebec – Canada debate.

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1 Translated by Jane Brierley.