

CANADIAN CONSTITUTIONALISM AND THE MEECH LAKE ACCORD

COMPETING CONCEPTIONS OF EQUALITY AND THE CANADIAN NATIONAL MYTH.

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Abstract

The goal of this paper is to explain the reasons for the failure of the Meech Lake Accord. This proposed constitutional amendment was necessitated by the refusal of the Province of Québec to sign the *Constitution Act, 1982*. Following an analysis of the constitutional history of Canada, prior to and after Confederation, this paper goes in depth into the most important sections of the Meech Lake Accord and explores the importance, as contributory elements, of several factors and evaluates their influence on the outcome of the proposed constitutional amendment.

This paper concludes that, contrary to popular opinion in Canada, various strands of nationalism are not solely to blame for the amendment's failure. In addition to the competing notions of Québec and English nationalism, the main thesis of this work holds that increasing regionalism, provincial activism, Native political movements, Charter supporters and minority groups all played a vital role in mobilizing against the Meech Lake Accord. Suggestions to bring any future attempts at constitutional reform to a successful conclusion include an overhauling of the negotiating process, an end to the long-standing practice of 'executive federalism' and the finding of a balance between the demands of Québec and the needs of the rest of Canada.

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Chapter 1

Introduction

This paper aims to provide an overview of the current Canadian political situation with an emphasis on the ongoing Constitutional debates which have been prevalent since the early 1980s. Specifically, these deliberations have pondered the place of the province of Québec within the Canadian federation but have, at various times, encompassed a far greater range of issues which would have undoubtedly been felt by all Canadians, not just those in Québec. Although Canada has proven itself to be a consistently stable democratic country, the volatility of the system due to conflicting demands on the part of the populace has been exacerbated by the first-past-the-post electoral system that heavily favours regionally-based parties which, unsurprisingly, have frequently had on their agenda the decentralization of the country.

This pattern has followed a long historical trend of federal-provincial rivalry, which has proven to be more of a running battle that has seen either level of government at one time or another exercise more power and influence over any given province of the federation. However, the debates surrounding the validity of this sort of increasing and eroding federalism were effectively muted by the fact that the final word in constitutional matters was not in Ottawa but rather at the Westminster Parliament in London for 115 years following the creation of today's Canada in 1867. It was not until the final term of Pierre Elliot Trudeau's Prime Ministerial service that this debate was once and for all opened. This occurred due to his stated goal to bring home, or "patriate", the British North America Act (1867) by requesting a constitutional amendment from the British Parliament which would from then on give Canadian politicians the

final say on any future changes to the Constitution. It was at this point that the constitutional debate exploded and forever changed the nature of federal-provincial relations in Canada.

The most important factor in this tension was the astute refusal on the part of the Province of Québec – Canada’s only majority francophone province – to sign on to the new Constitution Act unless its demands were met. While that province sought many additions to the proposed amendment, the most significant and symbolic add-on proved to be the most contentious: the recognition of Québec as a “distinct society” within Canada. After it became apparent that the federal government, together with the rest of Canada – the remaining nine provinces – would not agree to most of these changes, Québec withheld its non-required consent for the Constitution to be implemented and, as a result, remains to this day outside of the Canadian “constitutional family”. For this reason, then, it is routinely assumed and widely accepted that the main issue in Canada’s ongoing constitutional troubles is the issue of Québec nationalism.

However, while the issue of Québec’s nationalism certainly plays an integral role in these ongoing debates, it is a simplification of the general constitutional debate to claim that this is the pivotal issue. In fact, there were several different stakeholders in the constitutional negotiations who all played crucial roles in influencing the process that eventually led to the Meech Lake Accord, which sought to gain Québec’s signature for the Constitution and constitutes the prime focal point of this paper.

Hypothesis

The primary reason for initiating this research was to seek an answer to why Québec had not signed on to the Canadian Constitution, and the initial hypothesis reflected this viewpoint.

However, it soon became clear that many more factors, besides Québec, were at play in Canada's constitutional debates and, accordingly, the hypothesis was modified to the point that the general assumption held that the issue of Canadian nationality as a theoretical concept and its practical implications on the institutions of government, in conjunction with competing regional, religious and ethnic identities all played their role in the eventual destruction of the Meech Lake Accord (MLA), which represented the culmination of efforts to accommodate the 'national question' within the wider Canadian framework. Of course, this was done unsuccessfully and as a result the primary focus of this paper is on the MLA, and the research question asks:

What are the reasons for the failure of the Meech Lake Accord, and what conditions need to be created for a successful constitutional amendment in the future?

This Accord found its initial strength in its single-minded focus on the issue of Québec to the detriment of other groups in Canada. This proposed amendment sought to gain the signature of the lone hold-out province by offering to it powers which were previously held by the federal government in addition to recognition as a "distinct society" within Canada, followed by a generalization of these powers to the other provinces which could then either choose to keep them or give them back to the federal government. However, there were several problems with the process and the outcome. Firstly, negotiations were held in secret and were, in general, confined only to the elected heads of the provinces and the Prime Minister of Canada, Brian Mulroney. Consequently, public opinion was initially ignored and there was very little input into the process from outside actors. Lastly, and most importantly, the final document effectively excluded large segments of the Canadian population through its over-emphasis of the English-French divide. As a result, the concerns of Native Canadians and ethnic minorities were ignored and the MLA was eventually seen as a failure not only of the, up to that date, predominant view

of Canadian history, but also of the long-established method of political negotiations which is referred to in this paper as ‘executive federalism’.

Methodology

The methodology employed is a combination of standard ways of approaching the topic together with a new method. Namely, while this paper maintains the traditional chronological ordering of events, it does not only focus on the Meech Lake Accord but rather provides a comprehensive historical outlook on the relevant aspects of Canadian constitutionalism, thereby providing the reader with a firm grasp of the main issues which preceded the Canadian constitutional debates in the 1980s. Secondly, this chronological ordering is designed to focus an increasing amount of attention on the Meech Lake Accord; in other words, it proceeds deliberately from a starting point where it makes little mention of the Meech amendment and ends with a thorough analysis of all relevant aspects of the Accord and then suggests a manner in which any future endeavours along the same lines as Meech could potentially be successful.

This thesis is structured as follows. Firstly, a section on the Constitutional history of what is modern-day Canada is provided. This section covers the time period from the British conquest of New France to Confederation in 1867, and lays the groundwork for a better understanding of the historical root of Canada’s current political and constitutional situation. An addition to this historical section focuses on the concept of nationalism in Canada, and how it grew out of colonial times and developed into the Quiet Revolution in Québec. To keep a sense of perspective, this section compares the aforementioned emergence of French nationalism with its counterpart of the English variety. It is following this historical analysis that the issue of Meech Lake is raised, albeit in a very tentative fashion. The first section which has a direct emphasis on

the 1980s constitutional era deals with the notion of executive federalism, and how it influences decision-making processes in Canada; a discussion on benefits and drawbacks is also included.

Following these areas which focus to a greater or lesser extent on historical aspects, the new constitutional system of the 1980s is explored. Here, the impact of Native, minority and women's group political action is discussed, as is its influence on the negotiations which led up to the Meech Lake Accord. Similarly, the 1980 Québec referendum on independence is also included and serves as an introduction to a new commitment to Québec: the Trudeau promise of a revitalized federalism which was subsequently broken by the passing of the Constitution Act (1982) without the signature of that province. Finally, the new post-Trudeau era is analyzed and its implications for the MLA are discussed. This includes the coming to power of the Mulroney Progressive Conservatives and his new promise to Québec. Yet, much like Trudeau, this promise is diluted by pressure from powerful forces which in this case includes Native groups, the actions of the Québec government and most importantly, the other nine provinces. The conclusion suggests methods which would avoid certain problems in any potential future negotiations, and seeks to predict the implications were that next round to fail.

Chapter 2

History of Canadian Constitutionalism

Canadian federalism has developed out of a shared history among English and French settlers which can be traced back to the 18th century, yet its institutions, practices and conventions were decided upon, and implemented not in Canada but in the corridors of power in London, England. While the need for co-existence is what shaped the federation, and eventually brought together ten provinces into a single confederation, it can not be forgotten that all along Canada was a British project, a fact which is reflected in the realities of the Canadian constitutional debate up until 1984. However, a common linkage from past and present exists: the issue of Québec.

Historical Overview

Canada was known prior to 1763 as New France, and it constituted a vast territory in North America which was surrounded by English territories to the east and north, and Spanish claims to the west and south. While geographically one of the biggest pieces of land claimed by a European monarch on the North American continent, it was by far the most under-populated and at its height only had 50,000 settlers. This situation was not to last, however, as the large and soft target proved too tempting for the settlers of English North America, otherwise known as the 13 colonies. Following the outbreak of war in Europe between England and France, the numerically superior English forces took the initiative against New France and by 1763, at the conclusion of the Seven Years' War, New France had ceased to exist on the political map of North America. The Treaty of Paris, 1763, officially confirmed that all of the possessions were lost, and what was once known as New France was split up and absorbed, becoming yet another British colony

in the new world. This was the crucial first step in the long process which saw the Union of Canada come into existence.

Québec Act, 1774

The Constitutional history of Québec, and by default, the rest of Canada began with the passing of the Québec Act, 1774. It was developed out of the need to assure the loyalty of the province's French speakers in the face of the growing revolutionary crisis in the 13 colonies to the south. Whereas the previous policy had been in favour of full subjugation, assimilation and territorial compactness, the Québec Act reversed these trends abruptly and was seen as an attempt to avert a revolution in that province. This first Constitution provided for the expansion of the territory of Québec into the present-day United States while confirming the position of the appointed Governor and re-affirming his dictatorial powers; in addition, it legalized the informal 17 to 23-man legislative council (made up of appointees) and granted no assembly as was demanded by the English merchants who had moved into the province since Conquest¹. The reason for denying the English an assembly was clear: in New England, where such bodies had been granted to merchants, these had become the most radical incubators of revolutionary thought and activity and the British had no wish to repeat their mistakes in the Province of Québec.

In addition, Canada's first Constitution allowed civil matters and property disputes to be judged under French Civil Law, while criminal cases were handled by the English criminal code. The seigniorial system, which was essentially a type of feudalism, was maintained in New France in a bid to retain the support of the colony's nobles, while Catholics were finally allowed to become civil servants through the withdrawal of the *Serment du Test* (Oath of Belief) which

¹ Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. New Canada Press Ltd. Toronto, ON: pp. 49-52

required a renunciation of the Catholic faith². Lastly, the religious head of the Province, the Catholic Bishop, was allowed to retain all the rights he enjoyed under the French regime. Clearly, these concessions do not seem to be logical given the fact that the British were the undisputed conquerors, no vestiges of resistance remained, and that the French were likely to disappear through assimilation if the British continued their policies for a few more generations.

Yet, in the context of the American Revolution, the Québec Act of 1774 made sense and accomplished what its goal: in the face of invading American Revolutionary armies, most inhabitants of the province of Québec remained loyal to the British King and some joined in the fight against the Americans, while some also joined the Americans and fought the British³. The different groups in Québec had different attitudes to this first Constitution: the English merchants were not satisfied, their demands were not met; the Church hierarchy was extremely pleased and paid back the British with loyalty and the indoctrination of their flock with pro-British sentiment; the nobility kept their land and status while the average *habitant* in the colony simply received a confirmation of his servitude⁴. The situation remained little changed until the American Revolutionary War had ended, and Canada became engulfed with United Empire Loyalists which demanded their own domain free of the French.

Constitutional Act, 1791

The result of this influx was the Constitutional Act, 1791, which for the first time divided the Province of Québec into English and French parts and represented an embryonic form of today's Canadian federation. This was an Act of the British parliament and sought to accommodate the newly-arrived Loyalists from the American colonies. It did so by creating the

² Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. New Canada Press Ltd. Toronto, ON: p. 51

³ Fiske, John. 1919. The American Revolution. Houghton Mifflin Company. Boston, MA: pp. 174-175

⁴ Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. pp. 49-52

administrative entities of Upper Canada (today's Ontario) and Lower Canada (today's Québec), one for English Protestants, the other for French Catholics, respectively. Many consider this a watershed moment for Québec nationalism, as for the first time it provided the French with a territory which they could call their own and was meant to be separate from the English in Upper Canada⁵. Included in this Act were, for the first time, provisions for a representative government for the French as well as the English; yet the real power was still wielded by the Governor and his appointed council. In any case, it is clear that the Constitutional Act of 1791 created the two territories which would later form the basis of the Canadian federation and which, to this day, still represent the two largest entities in Canada. Consequently, this second Canadian Constitution must be viewed as extremely significant.

The power of British rule in North America was to be tested continuously, however. The most direct challenge came, yet again, from the Americans who took advantage of the chaos in Europe created by Napoleon to invade Britain's colonies to the North. Elements of the American government in addition to large portions of the population believed it was their "manifest destiny" to control the North American continent and, accordingly, an invasion of Upper and Lower Canada precipitated the war of 1812 which did not end until the Treaty of Ghent, 1815, which restored the status quo between the belligerents. The indoctrination of the French masses by the clergy was apparent as many signed up to fight off the American invasion of Lower Canada. While the Americans were not able to achieve their objectives, the reasoning they used for the invasion was nonetheless understandable: Upper Canada was populated mostly by American immigrants and both English and French Canadians had strong anti-aristocratic feelings. They believed these factors would make an American invasion successful, yet they

⁵ Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. New Canada Press Ltd. Toronto, ON: p. 6

were wrong: most of the population remained loyal. However, only 25 years later both provinces would break out in rebellion against the British in much the same way, yet for different reasons, as the Americans had some 60 years prior.

The Rebellions

The rebellions of the Canadas were a watershed moment which brought increased British interest in their North American possessions and through its consequences guaranteed the eventual Confederation of Britain's North American possessions into a single country. The makings of this rebellion are clear. While both provinces did not have many things in common, it was apparent that

“in both Lower and Upper Canada the population was divided into two clearly-defined sections whose antagonism for years had been bitter and apparently irreconcilable”⁶.

These two divisions in both provinces consisted of the nobility/clergy alliance, and of the rest of the population which was not party to any entitlement system. Indeed, while aristocracy had a centuries-old tradition in Britain, in Canada it was not likely to be supported by individuals who had made their way to a new continent and settled wild frontiers through their own hard work; they felt that the land was *rightfully* theirs by virtue of the work they had put into it, and did not believe that anyone save the King had a birthright to rule over them⁷.

This aristocracy was equally prevalent in both Upper and Lower Canada, where it was known as the Family Compact and the *Château Clique*, respectively. They consisted of a group of wealthy patrician families, landed nobility and extremely wealthy merchants who surrounded

⁶ New, Chester. 1929. Lord Durham. Clarendon Press. Oxford, UK: p. 320

⁷ *Ibid.*, p. 321

the Governor and tended to influence the running of the colony⁸. Despite the fact that representative government was in existence, it had virtually no power over this conglomeration of forces. As a result, widespread resentment against this secretive and oligarchic group began and would eventually break out into open rebellion. However, this resentment was first manifested through politics. In both colonies, a conservative party had developed which essentially supported the status quo, and a Reformist or Radical party had formed in opposition to this group which was frequently stifled by the Governor. Once it became apparent that changes could not occur through the political process, outright rebellion remained as the only option.

This became clear after Louis-Joseph Papineau, the speaker of the Lower Canada Assembly, issued a declaration entitled *92 Resolutions* in 1834 which were essentially a list of grievances against the colonial government and a call for democratic governance. While the demands seemed reasonable to most colonists, in Britain these *92 Resolutions* were viewed as being “bristled with American conceptions of government” and were therefore rejected⁹. With nothing left to do in the political realm, both Upper and Lower Canada slowly moved toward a rebellion which sought to remedy economic, racial, political and constitutional grievances.

In 1838, the two Canadian colonies descended into rebellion against the status quo. Despite some initial successes in Lower Canada, the *patriotes* as they called themselves were eventually defeated by superior British manpower and organization, while the rebellion in Upper Canada did not enjoy nearly as much initial success and was effectively defeated following one crucial battle. While in English and French Canada the rebellion had economic, political and

⁸ Smith, David. 1999. Republican Option in Canada, Past and Present. University of Toronto Press. Toronto, ON: p. 75

⁹ New, Chester. 1929. Lord Durham. Clarendon Press. Oxford, UK: p. 324

constitutional elements, only in Québec did it have a racial character as well¹⁰. In that colony, the outbreak looked more like a civil war than a class struggle: English speakers formed paramilitary units and attacked suspected *Patriotes* in the streets while French speakers formed their own units and attacked British merchants and pro-British English speakers wherever they could¹¹. The Lower Canadian rebellion was a much more serious affair than in Upper Canada and illustrated that racial grievances had not subsided since the Conquest but had, perhaps, become more pronounced, despite the official pro-British propaganda which the *habitant* elites espoused.

However, the Constitutional aspect of the rebellions must not be overlooked either. Both colonies had the exact same Constitutions, and as a result, “its ineptitudes caused similar results”¹². In both Canadian political systems, Governors were quickly beholden to local oligarchies which controlled the executive and legislative councils. This behaviour was, of course, markedly undemocratic and came into contact with the “democratic sentiment [which] was widespread in both provinces and at war with oligarchy”¹³. The effects of the rebellion were clear: civil liberties were suspended, many rebels who were caught were tried as traitors, some were hanged, others were expelled, and British control became more intense. Yet, none of these short-term measures had anything approaching the impact of the English politician who was sent to British North America to enquire into the causes of the rebellion. Lord Durham, in his report, set Canada on the course to democracy via responsible government and unification, yet while these aims were achieved, the reason for them was not.

¹⁰ Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. New Canada Press Ltd. Toronto, ON: pp. 63-65

¹¹ Theller, Edward. 1841. Canada in 1837-38: Showing the Causes of the Late Attempted Revolution and its Failure. HF Annors. Philadelphia, PA: p. 35

¹² New, Chester. 1929. Lord Durham. Clarendon Press. Oxford, UK: p. 329

¹³ *Ibid.*, p. 329

Durham's Report, 1840

Lord Durham's Report, officially known as the *Report on the Affairs of British North America*, was the product of Durham's investigations into the causes of the rebellions in Upper and Lower Canada. The recommendations found therein would set the two provinces on the path of eventual union and provided for a representative and responsible government. As a result, "Canadians rightly think of Lord Durham's report as blazing the way to their first full and effective democracy"¹⁴. It was believed that Lord Durham, otherwise known as John George Lambton, a notable British Whig politician, was the only man who could "settle the differences in Canada and restore good government to that unhappy country"¹⁵. Of course, the erroneous assumption here is that good government had previously existed.

In the immediate aftermath of the rebellion, when Durham arrived in Canada, racial tensions were at a high and it was consequently his misfortune to reach the provinces when these antipathies were extremely pronounced, mainly because what he saw during his short tenure there was reflected in his report which presented a gloomy picture of a racial war which could only be won by the English through the rapid and immediate assimilation of the French. And thus, perhaps tellingly, the report which would eventually create Canada was infused with the racial tension which continues to exist to this day between English and French speakers.

As a result of his claims in regard to the French nation, in today's French Canada Durham's report is chiefly remembered for its anti-French declarations. Indeed, Durham's report was "riddled with inaccuracies" and although the report was implemented for the most part, his

¹⁴ New, Chester. 1939. Lord Durham and the British Background of his Report. McMaster University Press. Hamilton, ON: p. 119

¹⁵ *Ibid*, p. 127

main assertions in regard to the French race did not come to fruition¹⁶. Upon reading what he actually says, it becomes clear that his conception of reality was strongly influenced by an Anglo-Saxon superiority complex which did not value the contributions of French Canadians. For example, Durham's Report states that

“there can hardly be conceived a nationality more destitute of all that can invigorate and elevate a people, than that which is exhibited by the descendants of the French in Lower Canada, owing to their retaining their peculiar language and manners. They are a people with no history, and no literature”¹⁷.

Such claims today would strike almost any individual as racist, but in 19th century British politics such pronouncements were not too offensive to be included in one of the most important documents in the history of the British Empire. This passage makes it evident that Durham

“carried with him to Canada a prejudice, deep-rooted in the English ruling class, that the French Canadians were a disloyal and lamentably inferior people who could never fit into the providential scheme of things until in some mysterious manner they were made over into Englishmen”¹⁸.

It appears evident that Durham sought to establish tranquility in the two Canadas by subjecting the French-speaking Lower Canada to the rule of an English majority which could only be accomplished through assimilation via a legislative union¹⁹. However, somewhat paradoxically, the avowed purpose of the union of the two Canadas was defeated by the Union itself, and Durham's forecast for the French race in Canada was a complete miscalculation.

The Report, which insisted on laying the basis for a permanent connection of Canada with Great Britain and was transfused with the spirit of imperialism only served to galvanize the

¹⁶ Martin, Chester. 1939. Lord Durham's Report and its Consequences. University of Toronto Press. Toronto, ON: p. 1

¹⁷ *Ibid.*, p. 5

¹⁸ New, Chester. 1939. Lord Durham and the British Background of his Report. McMaster University Press. Hamilton, ON: p. 128

¹⁹ Martin, Chester. 1939. Lord Durham's Report and its Consequences. p. 5

French into action²⁰. With an unprecedented societal consensus arising out of the backlash from the Report, French Canadian politicians of all stripes set themselves to continuously pushing for more rights and less central authority; this tradition remains today as all governments in the Province of Québec, whether pro-Canadian or pro-Independence, refuse to negotiate any arrangements which decrease the power of Québec and consistently attempt to increase their standing vis-à-vis other provinces. The outcome of his report was the Act of Union, 1840, which abolished the governments of Upper and Lower Canada and established the United Province of Canada. However, the goals of this union were not achieved.

Act of Union, 1840

The Act of Union (1840) was the manifestation of Lord Durham's Report. English became the only official language, property requirements were introduced for assembly members and representation was equal despite the fact that there were more French than English speakers in the new Union. It represented the goal of assimilation of the French, however it managed to assure for all time their survival in North America²¹. This was done in several ways.

Firstly, the unequal representation of the English in the joint assembly soon turned to their disadvantage as a large wave of immigration from the British Isles created a British majority soon after the creation of the Province of Canada. However, by that time the principle of no representation by population was set, and the French benefited from Durham's desire to repress them: now they were disproportionately represented. Similarly, it was hoped that the merging of the two provinces into one would slowly swamp the French as English Canada was growing much faster than the French part. However, due to the contents of Durham's Report,

²⁰ New, Chester. 1939. Lord Durham and the British Background of his Report. McMaster University Press. Hamilton, ON: p. 134

²¹ Bergeron, Léandre. 1975. The History of Quebec: A Patriote's Handbook. New Canada Press Ltd. Toronto, ON: p. 107

Francophone sentiment was so galvanized that it became a goal among all sectors of society to prove the report wrong: delegations were sent to Paris and brought back thousands of texts on French Canada, and a history was developed which romanticized the period of New France and demonized colonization at the hands of the British. In short, cultural survival was assured by the individual who sought to make certain the French would disappear²².

The Durham Report included many other aspects. He viewed the American system of land allotments as the best in the world, as they “showed no favouritism [and distributed] amongst all classes and persons upon precisely equal terms”²³. He tried to make Canada an imperial counterpart to this utopian American system of land allotment and consequently many amendments in the real property law were included. Also, educational and judicial reforms, municipal governments, land allotments to the Church, the development of public works, the establishment of a rural police force in Lower Canada, a system of county courts and finally a stipendiary magistracy were all provided for, and thus the Act of Union constitutes the third, and last, Constitution which preceded Canadian Confederation in 1867²⁴.

Confederation

The British North America Act (1867) was the final act which started the process of bringing together Britain’s disparate North American colonies into a single entity, to be called the Dominion of Canada. The need for confederation arose out of several factors. Firstly, the envisaged assimilation of the French was not proceeding according to plan, and the United Province of Canada was in a legislative deadlock which created a de-facto situation where the

²² Martin, Chester. 1939. Lord Durham’s Report and its Consequences. University of Toronto Press. Toronto, ON: p. 7

²³ *Ibid.*, p. 3

²⁴ New, Chester. 1939. Lord Durham and the British Background of his Report. McMaster University Press. Hamilton, ON: p. 133

Francophones and Anglophones each controlled their own halves of Canada. It was hoped that joining even more English colonies to the United Province would once and for all swamp the French speakers in an English sea. Secondly, new British Imperial policy no longer preferred to station troops overseas, and in the face of the American threat, pressure started to grow for the unification of the colonies for defensive purposes. This threat was made ever-more apparent following the Fenian raids, all of which originated in the United States, and British intervention on the side of the South during the just-finished American Civil War. Lastly, and perhaps most significantly, the commercial elites from all of the colonies preferred a union as a means of increasing profits. With all of these factors in play, the British North America Act was given royal assent by Queen Victoria in 1867, and the Dominion of Canada was born by the union of the Province of Canada (today's Ontario and Québec), New Brunswick and Nova Scotia.

This Act, today renamed the *Constitution Act, 1867* remains in effect. Upon its original passage, it contained the framework of the Canadian state, and included passages on taxation and judicial processes, among others. However, it is significant to note that Canada, with respect to the BNA Act, only gained *internal* sovereignty: foreign policy was still in the hands of Britain, and the highest court of appeal was the Judicial Committee of the Privy Council, located in London, England. In many respects, then, Canada still remained a colony despite having gained formal independence. Yet the BNA Act remains the single most important document in Canadian history, and is universally recognized by both French and English as a positive step away from Great Britain.

Historical Summary

Therefore, the *Québec Act (1774)*, the *Constitutional Act (1791)* and the *Act of Union (1840)* were all very significant Constitutional documents which outlined how the British

colonies of Upper and Lower Canada were to function. Each Act played a role in leading to the eventual unification of the Provinces of Canada through the *British North America Act (1867)*. While unification did not achieve the goals as laid out by Lord Durham in his 1839 Report, the Dominion of Canada was born out of both external (American) and internal (Francophone) threats, neither of which has really subsided to this day. While the United States has succeeded in colonizing all of Canada economically, culturally and, arguably, politically, the Francophones are still refusing to be colonized by the Anglophones in the country they share. As a result of this attitude, they have managed to survive as a distinct people in North America, surrounded by 330 million English speakers. The trouble that continues today is due to the unresolved issues of the BNA Act, which originates from a time of complete French servitude to British imperial causes and is, consequently, an outdated document. How it will be updated remains the central question of the Canadian confederation to this day, and was the main issue which the Meech Lake Accord attempted to address.

Chapter 3

The Quiet Revolution: Nationalism Re-defined

As has been demonstrated, following the British conquest of New France the British employed various methods in dealing with their new subjects. Whereas the initial compulsion, mostly due to the impending threat of the American Revolution, was toward tolerance, subsequent political developments in the French-speaking territories made it clear to many British politicians both in the Canadas and in Britain that assimilation was the only answer. The vacillation of this Imperial policy was motivated by “a combination of ignorance, prejudice and calculation” and was epitomized by Durham’s “two nations warring in the bosom of a single state” conclusion in his (in)famous report²⁵.

Fluctuating Identities

However, it was this very conception of a nation which changed in the years following Confederation and had a drastic influence on future Canadian generations. Following Confederation in 1867 until the onset of the First World War, English-speaking Canadians uniformly regarded themselves as “British” with special emphasis on their differences from the revolutionary United States. Nevertheless, this attitude soon changed as the next generation, emboldened and “nationalized” by the experiences of Canadian troops during the Great War saw this prevailing pro-British sentiment as a “colonial” mindset and argued that Canada was not British but rather North American²⁶. These changing notions of nationalism were inevitably intertwined with French-Canadian ideas of their own nationhood which, much like the British, were frequently subject to change. This change was most often due to external events.

²⁵ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 187

²⁶ *Ibid.*, pp. 14-15

In the 19th century, as Gilles Gougeon writes, the expression “French Canadian” did not yet exist: there were the *Canadiens*, and then there were the British²⁷. Of course, this led to the situation where the primary allegiance of both nations was not the same. This is demonstrated, for example, by the Boer War. In English Canada, support for the war was enthusiastic, as it was being fought in the name of the British Empire and Imperialism; conversely, in French-speaking regions, there was severe resistance to war-time measures and most of those opposed declared their loyalty to their native land and Canada rather than the British Empire, of which those lands were an integral part. This resistance to the war was highlighted by a prominent Québec politician who insisted that “Canada’s participation in the Boer War [is] a step backward from independent statehood, as it show[s] Canada [to be] a colony marching to orders from England”²⁸.

From these events, we can gain an understanding as to why nationalism increased in French-speaking lands as a result of external factors. If we accept Ramsay Cook’s definition of nationalism, namely that it is “a doctrine that provides emotional and intellectual justification for a people’s power over the place they claim is theirs”, we can see that French-speaking Canadians viewed the Boer War as the antithesis to all that they claimed they wanted from Canada²⁹. Whereas they were opposed to the use of the natural and human resources of their lands for British Imperial war aims, they were virtually powerless to do anything about it; while they sought to be distanced from the Crown and live an insulated, independent life in North America, the majority of Canada’s population, the English-speakers, favoured a pro-interventionist, Britain-centred foreign policy which frequently put their resources at the disposal of a “foreign power”, as they saw it. Thus, with increasing involvement in foreign, British-inspired wars

²⁷ Gougeon, Gilles. 1994. A History of Quebec Nationalism. James Lorimer Publishers. Toronto, ON: p. 18

²⁸ *Ibid.*, p. 41

²⁹ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 10

(World War I and World War II), the sense of French-Canadian nationalism grew to the point that they disassociated themselves with the conception of British domination, which was personified by Canada. Thus, the *Canadiens* became *Québécois* and rose to challenge aspects of their society which they viewed as the embodiment of English domination.

The Duplessis Regime

In the 1940s and 1950s, the embodiment of this domination was Québec Premier Maurice Duplessis. A reactionary, conservative leader who strongly supported the Catholic Church and sought to keep French speakers on the farms and tied to a traditional lifestyle, Québec's Quiet Revolutionaries (among them future Canadian Prime Minister Pierre Trudeau – the epitomization of a pro-Canada Quebecker, and Québec's first sovereigntist Premier, René Lévesque - of the Parti Québécois) viewed his political machine, the *Union Nationale*, as a backward force which held on to power through a combination of nationalist rhetoric, corrupt politics, a gerrymandered electoral map and good economic times³⁰. Duplessis was a fan of the traditional, rural life which was supported by the Church. Liberal-minded Quebeckers viewed this way of life as oppressive, the results of which were English as the co-official language of government and the language of business all throughout the province.

Clear divisions in Québec society developed as social ferment continued apace but found no political outlet due to the continued domination of the Duplessis regime. Even the church was not unified. For example, one of the earliest and most important Quiet Revolutionaries was Father Georges-Henri Lévesque, who founded a school of social sciences at Laval University and questioned the character of social thought in Québec. The school trained sociologists, economists and industrial relations experts who urged more inductive social science methods to

³⁰ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON p. 74

approach the province's social problems³¹. The general consensus among the ever-growing number of trained professionals of this school was that nationalism, at least as traditionally preached (Church, rural-living, deference to the English in economic matters) was an obstacle to a clear perception of Québec realities. These young liberals eventually became the bureaucratic backbone of what would become the Quiet Revolution, and their opposition to the Duplessis government led to the *modern* notion of nationalism which replaced the *traditional* form³².

However, the defeat of the Duplessis regime was slow in coming. The 1956 victory of Maurice Duplessis and his *Union Nationale* was a blow to reformist forces in Québec which “had sought to urbanize and industrialize the province and to empower the French populace to the detriment of the English”³³. Despite growing civil society pressure against the traditionalist government, the political machine which had been leading the province for decades looked unstoppable. However, a sense of fatigue among the populace and the party set in which was exacerbated by the untimely death of their leader, Maurice Duplessis. While on a trip to Northern Québec in 1959, the long-time party leader died; his successor, Paul Sauvé then suffered a fatal heart attack and his successor, Antonio Barrette, faced the electorate in 1960 completely unprepared with a tired and divided party behind him. The Liberals, under leader Jean Lesage, won and the Quiet Revolution began.

The Quiet Revolution Arrives

The Quiet Revolution, then, is a fundamental watershed moment not only in the history of Québec politics, but also in the notion of what it *is* to be a French-speaker from Québec. This Revolution, which occurred democratically rather than violently, saw a massive dislocation in

³¹ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 74

³² *Ibid.*, p. 75

³³ *Ibid.*, p. 57

Québec society which led to the emigration of hundreds of thousands of English-speakers, the re-assertion of the province of Québec on the national political scene, and a change in the way business was conducted in the province of Québec. To be more specific, the policies which were enacted by the Liberal government under Jean Lesage brought on the rapid and complete secularization of society – the church’s role in education was eliminated, and a ministry of education was created. Secondly, a welfare state, referred to as *l’état-providence*, was instituted and saw active government involvement in nearly all sectors of Québec life. The civil service was unionized, and legislation was introduced which positively discriminated in favour of French speakers in regards to economic activities. An example which can be cited is making French the only official language of the province, thereby requiring all civil servants to be fluent in French, which many English-speakers were not able to comply with for a variety of reasons. Lastly, and perhaps most symbolically, the provincial governmental “nationalized” electricity production and distribution by creating *Hydro Québec* which soon afterwards became a potent symbol of the changes going on in the province³⁴. All of these changes epitomized the axiom which has been attributed to René Lévesque and which spurred on the revolution – *maîtres chez nous* – “masters in our own house”. During this process, which most agree began and ended in the 1960s, a “new nationalism evolved that, like the old, expressed the aspiration of Québec’s leading classes. A transformed society required a new self-image: modern, urban, industrial, and secular”³⁵. The consequences were evident: with the new self-assertiveness, nationalism spread through the community of French-speakers and many soon ended up calling for independence.

However, this change in the fabric of Québec society had its opponents. Traditionalists opposed the secularization of society and sought a return to rural life. But it was indeed too late.

³⁴ Linteau, Paul-André. 1991. *Quebec since 1930*. James Lorimer & Company. Toronto, ON: p. 340

³⁵ Cook, Ramsay. 1986. *Canada, Quebec, and the uses of Nationalism*. McClelland and Stewart. Toronto, ON: p. 86

By 1971, the census found 4,759,000 French-speaking Quebecers, and classified them as follows:³⁶

Rural Farm	6%
Rural non-Farm	16%
Urban	78%
Total	100%

Within the space of a decade, the cities had been flooded with French-speakers. However, the unforeseen consequence would eventually prove to be extremely damaging: a drastic decline in birthrates occurred which saw the traditional French-Canadian family, in which it was not odd to have well over 10 children, drop to a level of reproduction within a generation that no longer made it possible for French-speakers to sustain their proportion of the Canadian population. This reality eventually required increased immigration in Québec from other countries and challenged the ethnic notion of Québec identity and forced the creation of a new, non-exclusive, cultural and linguistic identity which enjoys predominance today.

At a time of increasing nationalism in both linguistic regions of Canada, the external threat of the United States was a primary concern to English nationalists, while English nationalists were the primary concern of their French-speaking counterparts. While English-speakers sought a strengthened centralized federation which would enable the federal government to promote Canadian values to beat off the American threat, the Québec government sought ever-increasing decentralization, especially in matters touching culture. Therefore, a three-way dynamic was in effect which saw one group, English-speaking Canadians, fear the

³⁶ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 69

threat of economic colonization of the Americans while French-speaking Canadians tried to protect their culture in the face of English-Canadian predominance which was only worsened, in their opinion, by the growing power of the English-speaking United States. As Ramsay Cook writes, “the new nationalism of the 1970s was accompanied by an intensification of cultural pluralism and of regional economic and, sometimes, cultural, dissatisfaction” which was showcased by an increasing fragmentation of Canadian society along regional and linguistic lines³⁷.

If Cook’s framework is used, in which he purports that nationalism is about ethnic survival and growth, then we can see that the effects of the Quiet Revolution (French empowerment), its unforeseen side-effects (a drastic decrease in family sizes among French speakers) and external threats (the dominance of English-speaking America in the cultural field, and the seeming acquiescence to this dominance by English Canada) all led to a reactionary approach among successive governments which passed ever-stricter legislation aimed at protecting the French language and culture in the province, which they viewed as the last refuge of French-speakers in North America³⁸. This sentiment, which held Québec to be the last bastion of Latin-blooded French speakers in a sea of “Anglos”, was touched upon by Jean-Guy Pilon, an eminent Québécois poet, who in 1968 offered his thoughts on the question of Canada. “Canada is not a country,” he blatantly stated while on a road trip to Vancouver on the West Coast from Québec, “it’s a continent washed by three oceans where twenty million people live, about one third of them French...In these vast stretches of the Anglo-Saxon West I feel the difference inside me. I am definitely not at home and I realize how true it is to say that Québec is an entity

³⁷ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 16

³⁸ *Ibid.*, pp. 14-15

unto itself with its own culture, language, and way of life”³⁹. While it is likely that many French-speakers feel the same way, and probably just as likely that English Canadians would experience similar sentiments if they traveled into the heart of French Québec, Pilon’s statement clearly showed that by the end of the Quiet Revolution, the notion of Québec nationalism had firmly changed from an ethnic French notion to just being *French*, linguistically and culturally.

Ethnic to Civic Transition of Québec Nationalism

This had marked an important moment in the development of Québec nationalism. Whereas in the English speaking parts of Canada, it had always been difficult (specifically after the Second World War) to lay claim to an ethnic form of nationalism due to the presence of large numbers of Ukrainians, Germans, Poles and other groups of non-British origin and thereby necessitating language as a unifying factor, in Québec there was a marked lack of individuals who were not ethnically French and also spoke French as a primary language. The ones who did have this trait mostly tended to be Irish Catholics which quickly assimilated. Yet, by the end of the Quiet Revolution, and with the onset of large-scale immigration to offset the demographic losses in Québec, the notion of Québec nationalism caught up to its English counterpart and became a nationalism “[based on] a cultural idea, encompassing people of diverse origins” and, most significantly, eschewing ethnic links which became much less important as time passed⁴⁰.

This was publicly demonstrated in the aftermath of the 1995 Québec referendum, when Québec Premier Jacques Parizeau, in his concession speech, blamed the narrow defeat on “money and the ethnic vote”. His implication that non-ethnic French Quebecers were to blame for the victory (although, factually speaking, his statement was correct: opinion polls indicated

³⁹ Pilon, Jean-Guy. 1997. “Quebec and the French Fact” in Philip Stratford and Michael Thomas, (eds.), Voices from Quebec. Van Nostrand Reinhold. Toronto, ON: pp. 2-3

⁴⁰ Gougeon, Gilles. 1994. A History of Quebec Nationalism. James Lorimer Publishers. Toronto, ON: p. 109

that ethnic French-speakers voted mostly for staying in Canada, and this more than covered the slim difference of 54,288 votes from the “No” and “Yes” side) quickly drew harsh criticism from elements in the pro-Independence community, and he was forced to step down amid allegations of racism⁴¹. At the same time, it can be construed that this bloc of “ethnic votes” which was, in the majority, for a unified Canada demonstrates that the non-ethnic emphasis of Québec nationalism failed to persuade the target audience that they could fully participate in the project of an independent Québec; rather, it seems to have only convinced the ethnic French that there should be no such “bloodline” dimension to Québec nationalism.

Therefore, it appears that the nature of Québec nationalism has definitively changed over the centuries. It has gone from an ethnic concept which placed an emphasis on a traditional, rural lifestyle and the church to a modern, linguistic, secular and cultural notion which seeks to include all people who are willing to adapt to Québécois society. Similarly, English-Canadian nationalism has also evolved from a generally pro-British, ethnic concept which had strong elements of anti-Americanism to a non-ethnic, linguistically-bound ideal which places an emphasis on a Canadian identity over all others while retaining strong anti-American elements, specifically in regard to cultural matters. This type of nationalism is highly accepted by newcomers to Canada as it provides a method of assimilation and presents a common “other”, personified by America. To be sure, past elements of pro-British sentiment have not completely disappeared, but they are nowadays, partly as a result of demographic changes with respect to ethnicity, and partly out of deference to Québec, much less important and play a very small role in Canadian nationalism. This is evidenced by the 1965 adoption of a new Canadian flag which eliminated the Union Jack and created a “unifying banner” which symbolized the development

⁴¹ Le Directeur général des élections du Québec, “Référendum du 30 octobre 1995” retrieved from http://www.dgeq.qc.ca/fr/tableaux/Referendum_1995_8481.asp on Wednesday, May 16, 2007

of Canadian identity away from Britain and towards a more organic, land-based notion of Nativism.

Chapter 4

Negotiating in Secret: The Effect of Executive Federalism on the Negotiating Process

The very existence of Canada can be attributed to an elite-driven process which saw regional political heads meet in closed-door proceedings to create a unified country without the knowledge and, in many cases, without the direct approval of the people of the colonies concerned. This practice continued in the years after Confederation and, by the time of the Constitutional Crisis of the 1980s, had developed to such an extent that it was commonly said that Canada was governed by “11 men in suits”. The standard accusation, which was a reaction to such practices, was that these politicians were “out of touch” with the general Canadian populace and the failure of the Meech Lake Accord amply demonstrated just how correct this assertion was.

Executive Federalism: Before and During Meech Lake

Without a doubt, the negotiations surrounding the Meech Lake Accord were a prime example of executive federalism: the various provincial premiers met together with the Prime Minister in a locked room surrounded by a thick security blanket which even turned away provincial and federal cabinet members who attempted to join in the negotiations. It was clear to all, even elected leaders who had every right to join in the negotiations, that you had to belong to an exclusive club to sit in and have your say in the process which was meant to bring Québec into the Constitutional family – you had to be one of those 11 men. The power associated with being one of these individuals is apparent: 1 provincial premier was able to force the federal system into paralysis and continuously halt federal initiatives if he was not happy for some

reason. An example can be found in the 1940s and 1950s in Québec. Premier Maurice Duplessis, a federalist, thought that Confederation was threatened by the centralist designs of the federal government and consequently created legislative paralysis when the consent of all provinces was required in certain matters⁴².

However, these beliefs were increasingly challenged by the federal government which, starting with Pierre Trudeau, began to effectively position itself as a competitor to the Québec government in representing the aspirations of French Canadians⁴³. This policy was a direct rebuke of the Duplessis legacy, and sought to strengthen confederation and lessen separatism within Québec. Consequently, a new dimension was added to the notion of executive federalism which no longer had the Government of Québec as the legitimate, and only, defender of French-speaking rights within Canada: there was another option. This policy eventually developed to the point where both “the Anglophone minority in Québec and Francophone minorities elsewhere [were] beneficiaries of government sponsorship, for national unity reasons, that have been denied to other minorities”⁴⁴. Of course, this emphasis on the part of the federal government on only these two “founding peoples” is what allowed the MLA to degenerate into a Québec-only affair which neglected the concerns of Natives, not to mention those of women and other ethnic groups. This refusal to allow other issues to enter the negotiations led to the downfall of the MLA, and represents what was referred to as “a textbook example of executive federalism that was issued a staggering rebuff by the varied constituencies of Charter supporters and aboriginal

⁴² Gougeon, Gilles. 1994. *A History of Quebec Nationalism*. James Lorimer Publishers. Toronto, ON: p. 73

⁴³ Cook, Ramsay. 1986. *Canada, Quebec, and the uses of Nationalism*. McClelland and Stewart. Toronto, ON: p. 115

⁴⁴ Cairns, Alan C. 1991. *Disruptions: Constitutional Struggles from the Charter to Meech Lake*. McClelland and Stewart. Toronto, ON: p. 123

peoples”⁴⁵. Therefore, executive federalism, while potentially being beneficial in some respects, was used in negative ways during the negotiations on Québec’s place in Canada and contributed to the failure of the Meech Lake Accord.

Reasons for System

The reasons for this system are partly political and partly historical. As already mentioned, Confederation was created in such an environment, although not nearly as restrictive an environment as that which surrounded the Meech Lake negotiations 120 years later. However, another element was political: Canada’s electoral system is a first-past-the-post system which heavily favours parties with regional support. Consequently, majority governments on the provincial and federal level are the norm, and the “magic number” to secure such a government is usually believed to be the support of 40% of the electorate. As a result, the need for bargaining and negotiation between parties is lessened, and dominant parties, along with their dominant party leaders, fully control governments in all political aspects as long as a majority exists: the alternative is simply not necessary. This is simplified by the convention of party discipline which forces Members of Parliament (MPs) and Members of Provincial Parliament (MPPs) to vote according to the party line. If they find themselves diametrically opposed to the leader’s wishes and go as far as to vote against a particular measure which the Cabinet seeks to adopt, that member is almost certain to be expelled from the party and thereby risks re-election. Therefore, as a result of the electoral system and common political practices, executive federalism is not only enabled but encouraged. This leads to less-than-democratic decision making processes which are frequently forced upon unwilling elected representatives. The Meech Lake Accord

⁴⁵ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 17

demonstrated this process, and also revealed that the strength derived from a majority government was also a fatal weakness when a Premier headed a minority government, as was the case with Ontario's David Peterson who governed through an informal coalition with the left-wing New Democratic Party (NDP).

However, it can not be argued that executive federalism is indeed all bad. Over the course of Canada's political history, it has proven beneficial in federal-provincial relations as the varying constituencies in each province have been kept in the dark about developments and certain negotiations. This has undeniably facilitated deals which have been struck in the past, and the common thinking was that this was the best route for the Meech Lake negotiations. In any case, this proved to be a fatal miscalculation. Whereas it was already well known that public opinion Canada-wide was divergent in regards to the MLA, the attempt to avoid confronting this opinion and operate in secret to the detriment of other groups eventually led to the death of the Constitutional initiative. The reason was simple: the singular focus on Québec left many powerful and influential groups, namely Natives, women and other ethnic/cultural minorities out of the Constitution. The 11 men in suits were out of touch with the situation on the ground, and the perceived strength of the MLA negotiations, namely its secretiveness, proved that in modern Canada, public consultations and inclusiveness were preferable in Constitutional matters.

Chapter 5

The New Nationalism: The 1980 Referendum and Patriation

Aboriginals

While the Meech Lake Accord is associated with the 1980s and grew out of the refusal of Québec to sign the Canadian Constitution in the early part of that decade, the emergence of several groups of actors can be traced back to the beginnings of the Trudeau era in the late 1960s and early 1970s. The Natives are one such group.

Their eventual opposition to the MLA grew out of government policy dating back to 1969 which saw the publication of a highly controversial document, the White Paper on Indian Policy, by the federal government. This document, spearheaded by then-Minister of Indian Affairs Jean Chrétien, was an essentially assimilationist attempt to bring Natives into Canadian society. This desire to bring them “off the reserve” had at its foundation a long-standing tradition of viewing this group as being inferior to other inhabitants of Canada and led to the assumption of the superiority of European civilization to that of the Native⁴⁶. In any case, despite the attempts of government to officially assimilate the Natives, the policy was eventually defeated through a concerted effort on the part of Aboriginal people Canada-wide, and this marked the beginning of their empowerment in the political sphere. The lessons they learned from this early confrontation with the federal government enabled them to effectively question, delay and eventually kill the Meech Lake Accord two decades later. The assumption of inferiority no

⁴⁶ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: pp. 25-27

longer existed, and now Natives, through their new-found unity, bargained from a position of strength.

Another reason for the ability of Natives to oppose any government initiative which they viewed as being to their detriment is the training which Indian groups received throughout the 1970s. These organizations improved their political skills and enhanced their visibility at a time when stalemate prevailed in federal policy towards status Indians; what's more, they acquired these skills with the support of the federal government's money and know-how. This was a crucial development for Indian unity and, in addition to strengthening their movement, made them an important new actor on the national political scene.

Lastly, and perhaps most significantly, Native groups challenged the Meech Lake Accord due to events which occurred in the 1980s. The adoption of the Canadian Constitution broadened the definition of the indigenous community from "Status Indians" (section 91(24)) to "aboriginal peoples", thereby significantly enlarging and diversifying the population which defined themselves as "Native"⁴⁷. In addition to an increase in numbers, the geographical distribution was increased as Inuits, the inhabitants of Canada's far-north, were included in the definition. Significantly, they constituted the majority of the population in large swathes of the Canadian Arctic, and together with increased activism, they were able to realize a long-standing dream: the creation on April 1st, 1999 of Nunavut, meaning "our land", carved out of the Northwest Territories with its capital at Iqaluit. It represents the first Native-majority political subdivision in Canada, and set a precedent for Native dealings with the federal government. Additionally, through the 1970s and 1980s, four Constitutional conferences were held with aboriginal leaders

⁴⁷ Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: pp. 25-27

which affirmed the belief that aboriginals were not just “other Canadians” but a fundamental, constitutive people⁴⁸. The fact that the MLA did not include such language, but only listed the English and the French as founding peoples, was clearly met with anger and disbelief on the part of Native organizations which felt that the draft Accord was a critical “step back” in the process of gaining rights for the aboriginal peoples of Canada.

The “other” Canada

However, during the 1970s and 1980s there was also another critical group which emerged as an important player. The simplification of the Canadian national question, which led to the division of Canada into English and French parts, overlooked that there existed an “other Canada” whose realities were not accurately reflected either in common political discourse nor public opinion. This “other Canada” consisted of immigrants and Native-born Canadians who did not descend from French or British settlers – the most numerically important of these groups being Ukrainians, Blacks, Poles, Germans and Scandinavians⁴⁹. They felt that the definition of Canada as a country with “two founding peoples” left them out of the picture, and, even worse, completely ignored the contribution made by these groups in the settling of the country⁵⁰. For example, in Saskatchewan, the settling of the province was essentially an Eastern European affair. These peoples came to a generally lawless frontier land and developed it into an important part of Canada, yet that reality was completely ignored by the Anglo and Franco-centric politicians which were negotiating the Meech Lake Accord. Therefore, there exists an erroneous assumption that “English Canada has one common ancestral linkage”, and it must be

⁴⁸ *Ibid.*, pp. 25-27

⁴⁹ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: pp. 14-15

⁵⁰ Smith, David, Peter MacKinnon and John Courtney. 1991. After Meech Lake: Lessons for the Future. Fifth House Publishers. Saskatoon, SK: pp. 12-14

acknowledged that the English-speaking parts of the country are not ethnically homogenous⁵¹. Indeed, Anglophone Canada is not a cohesive community with a coherent sense of itself. This entity, which many still see as being “one and the same”, is fractured “by the physical separation of the Atlantic provinces from Ontario, by multiculturalism, and by the provincialism stimulated by powerful provincial governments” or, in other words, regionalism⁵².

The First Referendum

The vast majority of Québec’s Quiet Revolutionaries were committed Canadians: they desired to empower French speakers, but to remain in Canada. However, divisions within this movement gradually developed and led to a split. The leader of the anti-Canada faction, initially only a small group, was René Lévesque who, in 1976, was elected Premier of Québec as his pro-sovereignty Parti Québécois gained power for the first time. His promise upon election was clear and to the point: to seek the independence of Québec from Canada through a referendum to be held in the near future. Perhaps it is not surprising that this occurred. In responding to Alexander Solzhenitsyn’s claim that only a revival of nationalism could save Russia from the evils of the Soviet system, Andrei Sakharov, a fellow dissenter, replied that “It may be said that Solzhenitsyn’s nationalism is not aggressive, but mild and defensive in character, only aiming to save and revive one of the most long suffering nations”, however, as history shows, the ideologists who bring such ideas into the public realm are always milder than the politicians who follow their footsteps⁵³. In the case of Québec, this observation is equally true. Jean Lesage was a Canadian and committed to his country; the future politicians who continued his work, both

⁵¹ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. p. 15

⁵² Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 189

⁵³ Rubin, Barry. 1974. Kontinent: The Alternative Voice of Russia and Eastern Europe. André Deutsch. London, UK: p. 29.

federalist and sovereigntist, frequently placed the continued existence of Québec within Canada in doubt and some, namely Lévesque and Parizeau, actively sought to separate it from the rest of the country.

Lévesque fulfilled his promise: he held his referendum in 1980. In the run-up to the vote, with nationalist emotions at a fever pitch, Pierre Trudeau feared for the existence of the country. He made an emotional plea to Quebecers to vote for Canada, and promised them that in the future, things would be different in their dealings with the federal government. He promised equal treatment for Québec, and a new way of doing business which would accommodate the desire of many in Québec to be distinct, while not being separate⁵⁴. And so it was that the referendum was defeated, with 60% voting to stay in Canada: now it was time for Trudeau to deliver on his promise. The result of the 1980 referendum signified the “beginning of the great discouragement: for nationalists and intellectuals, it was a terrible morning after, when hopes that they had entertained for ten, twelve, twenty years were dashed”⁵⁵. Yet the promises made by Trudeau are not enough to explain the outcome of the referendum: they were one of several contributing factors.

Surprisingly, an important factor in the failure of the referendum on independence was the success of the Quiet Revolution. By satisfying the demands of individual French Canadians for a more equitable distribution of wealth and power in Québec, “the Quiet Revolution undermined the claim that national sovereignty was the only road to equity and security”⁵⁶. In fact, the Revolution was so successful in changing Québec society that by 1980 many in Québec

⁵⁴ Russell, Peter. “Meech Lake and the Supreme Court” in Katherine Swinton and Carol Rogerson, eds., Competing Constitutional Visions: The Meech Lake Accord. 1998. Toronto, ON. Carswell Publishing: p. 97

⁵⁵ Gougeon, Gilles. 1994. A History of Quebec Nationalism. James Lorimer Publishers. Toronto, ON: p. 94

⁵⁶ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p.

no longer saw a threat to the continued existence of Québec's culture; indeed, many argue that had a referendum been held prior to the Quiet Revolution the result would have almost certainly been in favour of separation – most Québécois in those days simply felt nothing in common with the rest of Canada. The great achievement of the Revolution was bringing French-speakers in to business, industry and the professions and allowing them to speak their own language. Most perceived oppression was gone well before the referendum was held. After it had been made clear that his project for independence had failed, Lévesque turned his attention away from sovereignty and declared a new mission for his party: the gradual slimming down of government to lessen expenses and increase the importance of the private sector. Hence, at a crucial moment in Canadian history, the referendum was held and lost, thereby eliminating any prospect of another such vote for the foreseeable future. Most agree that the failure of the initial referendum and the “nationalist fatigue” which ensued was very important in keeping Québec within Canada immediately following the adoption of the Constitution without Québec's signature and the failure of the Meech Lake Accord.

Negotiating the New Constitutional System

Following the election of a minority Conservative government under Joe Clark, ending over a decade of Pierre Trudeau's rule, many thought they had seen the last of Canada's very first “superstar politician”. However, the minority government was defeated after only six months and new elections were held, surprisingly returning Pierre Trudeau to office with a majority. He realized that this would be his last term in office, and was determined to bring lasting change to Canada as he no longer had anything to fear from voters. It was this single-minded determination which led him to break his promise to Québec so soon after it had been made.

His most important order of business was, of course, the Constitution which since 1867 resided in Britain. In simple terms, this meant that the conventional practices developed and used between the years 1867 and 1982 required that both houses of parliament issue a request to the British government to place a proposed amendment before the British parliament⁵⁷. In addition, provinces had no formal role in the process, and federal consultation with them was confined to the provincial executives; in other words, they could consult provincial leaders, but did not require or seek anything from provincial legislatures. This is yet another example of the entrenched nature of executive federalism. Trudeau sought to rectify these situations by “patriating” the Constitution and by giving provinces a voice in any future Constitutional amendments, thereby making Canada at the same time more democratic and “fully independent”.

It was at this period that it became apparent to many in Québec that Trudeau had no intention of keeping his promise to them. While many provinces were opposed to certain elements of the Constitutional package, Québec appeared to be diametrically opposed to most of them, and it appeared that they would attempt to stall negotiations between the federal government and provinces by not participating in them. Trudeau responded by threatening, almost one year after the failed referendum and his promise to Québec, to proceed unilaterally. This revealed what would become a recurring pattern in the Constitutional reform process later on: the tendency of those in charge to exclude, or try to exclude, other Constitutional actors who stood in the way of agreement⁵⁸. This was a by-product of the unclear norms as to how much provincial government support was necessary for a proper request to Westminster, and in the

⁵⁷ Smith, Jennifer. “Conflicting Views of the Constitution and of Constitutional Reform” in Thomas Courchene, *Forever Amber*. Queen’s University Press: Kingston, ON: p. 71

⁵⁸ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. *After Meech Lake: Lessons for the Future*. 1991. Fifth House Publishers. Saskatoon, SK: p. 15

interim threatened to exclude Québec while Trudeau's successor in the Constitutional struggle, Brian Mulroney, included Québec while not bothering with Natives, Women's groups, and the "other Canada". Therefore, a definite pattern of exclusion exists which in every case has resulted in failure of the proposed initiative due to the resistance of the groups excluded. While it is debatable whether or not the patriation of the Constitution was a failure, it can certainly not be held to be a complete success as it did not gain the signature of Québec, the largest province and among the oldest continuously-settled parts of Canada.

The main reason for the opposition of Québec to the proposed amendment which would Patriate the Canadian Constitution was the conflict between its view of Canada and that of the other provinces. Namely, while most English-speaking provinces agreed that provinces should be equal with one another in their dealings with the federal government, Québec saw itself as the sole representative of "French Canada" and therefore viewed itself as being equal to all of the other provinces, which collectively represented "English Canada"⁵⁹. This view led the Québec government to propose amendments which were simply seen as unacceptable by other provinces.

One of these was an outgrowth of a negative side-effect of the Quiet Revolution: the demographic crisis which beset Québec and saw its proportion of the Canadian population continuously decline⁶⁰. As a result, the government of Québec sought to have a guaranteed, set amount of seats allocated to the province in the House of Commons no matter how small the population of Québec became. This was important because seats in Canada's lower house are set in relation to the population of each province, and the province's decreasing numbers combined with the growing influx of people to certain other provinces ensured that Québec was destined to

⁵⁹ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: pp. 53-57

⁶⁰ *Ibid.*, pp. 53-57

lose seats and, therefore, power. However, the other provinces viewed any such arrangement as unfair, as it would reward Québec positively for their declining population while restricting the possible amount of seats they could gain even as the populations of these English-speaking provinces grew along with their economies. Trudeau inevitably saw the contradiction in these two positions, and sided with the English-speaking provinces and went ahead with requesting an amendment from the British parliament, thereby breaking his promise to Québec.

Lastly, Charter supporters, otherwise referred to as Charter stakeholders, were another powerful group which voiced their concerns about the Meech Lake Accord and united in opposition to it. The Canadian Charter of Rights and Freedoms was included in the Constitution, and the citizen's relation to the Charter is the product "not only of traditional fundamental freedoms, democratic rights, and legal rights, but also of various particular recognitions for official-language minorities, for aboriginals, for multiculturalism, and for gender equality"⁶¹. All of these groups which gained some measure of Constitutional protection in the Charter were effectively shut out of the Meech proceedings, and they viewed the singular focus on Québec as an implication that their rights and their status within Canada is secondary to that of Québec's. Hence, they constituted another crucial element of civil society and contributed to the failure of the Meech Lake Accord.

Failure to obtain Québec consent

The failure to obtain the consent of Québec to sign the Constitution Act, 1982 was a watershed moment in Québec's relations not only with the federal government, but with the rest of Canada. Overnight, the province became unsure of its place in Canada and felt betrayed by the

⁶¹ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 117

very man who had convinced them to stay in Canada four years prior. While one would assume that the failure to give consent would raise a variety of legal problems, it is nonetheless true that the government of Québec's anti-Constitutional stance and subsequent denial of its legitimacy raised political rather than legal problems, for the Constitution still applied to Québec⁶². The reason for this event was essentially the treatment which it received at the hands of the federal government: it was treated as a province *comme les autres* – like the others. The implication, of course, was that Québec was not distinct and did not deserve special treatment. Although the treatment was more or less equal, there was a significant exception: a new interpretation clause was added to the document and tailored to the requirements of Québec which stated that the Constitution of Canada was to be interpreted in a manner consistent with “the recognition that Québec constitutes within Canada a distinct society” (section 2(b)), and “the role of the legislature and government of Québec to preserve and promote the distinct identity of Québec...is affirmed”(section 3)⁶³. Nonetheless, this was not enough.

The 1982 changes represented a victory for the “equality-of-provinces” view of the federation over the “equality-of-regions”⁶⁴. The equality-of-regions view, which was desired by Québec, permitted a veto for Québec on many matters that other provinces, with the exception of Ontario, would not enjoy. While the government of Ontario was not necessarily against this either, as it was clearly in their interest, opposition from the rest of Canada was too strong – in any case, Ontario's population was by far the largest, and growing speedily and would most likely emerge a winner no matter what type of agreement on representation was agreed upon. Its

⁶² *Ibid.*, p. 154

⁶³ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 155

⁶⁴ Blakeney, Allen E. “Commentary” in Thomas Courchene, Forever Amber. Queen's University Press: Kingston, ON: p. 63-65

interest was in seeing a strong and united Canada, and the Québec plan did not seem to be in favour of that.

Constitution Act, 1982

Following the patriation of the Constitution, Canada was meant to be a unified country with its own identity. However, the fact that this event occurred only in 1982 is indicative of the “Constitutional immaturity” of the country; the price for the immaturity was paid for at Meech⁶⁵. These questions were entrusted to Britain, the mother country, and when they became the responsibility of Canada, it hit at a time of Québec nationalism and aboriginal empowerment. Yet the document was nonetheless a conglomeration of all the notions of what being a “Canadian” meant. Specifically, the Charter of Rights and Freedoms entrenched, for the first time in Canadian history, the “protection of individual rights and freedoms including freedom of religion, assembly, association and the press” as well as a variety of other rights such as legal, democratic, equality, language and mobility rights⁶⁶.

Yet, while it was a victory for the individual, the Charter effectively eliminated the concept of parliamentary supremacy and set limits on what provincial governments could do. This was specifically egregious to Québec, which felt that its legislation in the area of culture would now have to be in line with Charter rights. Indeed, Cairns notes that the political purpose of the Charter was to “set limits to the capacity of provincial governments to respond to their local situation in ways that offended against the Constitutional norm of Canadianism enshrined

⁶⁵ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 14

⁶⁶ Bowker Montgomery, Marjorie. 1990. The Meech Lake Accord: What it will mean to you and to Canada. Voyageur Publishing. Hull, Quebec: p. 10

in the Charter”⁶⁷. An attempt to get around this issue was the introduction of the “notwithstanding clause”; designed for Québec but implemented in all provinces, it allowed a provincial government to override certain provisions of the Charter for a set amount of time. In other words, it enabled legislation “notwithstanding the Charter”. This issue would come to the forefront during the Meech process, as the Québec government employed the notwithstanding clause against a Supreme Court ruling which stated its anti-English language signs law was against the Charter. The reaction in English Canada was severe, and led at least three provincial governments to vow to not pass the MLA. Thus, the Charter and the reaction to it were also important factors in the eventual rejection of the Meech Lake Accord.

Therefore, the new Constitutional system which was implemented in the early 1980s had at its root the rejection of Québec’s aspirations. This rejection is what necessitated another round of negotiations which eventually developed into the Meech Lake Accord. While the Accord focused singularly on the issue of Québec, many other actors were ignored. These actors, such as Native and women’s groups and people who did not belong to either British or French ethnicities, opposed the amendment because it denied them their symbolic place in Canada. Similarly, the Accord was viewed as the bare minimum acceptable by the Québec government, while many provincial governments in English Canada felt that it went too far. Lastly, the patriation of the Constitution and the introduction of the Charter, both of which were done against the wishes of Québec, made it clear to French speakers that the promise of Pierre Trudeau had been broken: it was business as usual with respect to Québec-Canada relations. The tools which enabled provinces to escape certain clauses in the Charter, namely the

⁶⁷ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 22

notwithstanding clause, was then used by the Québec government in the dispute over English-language commercial signs in Québec which radicalized public opinion in English Canada and, together with strong opposition from Native politicians, constituted the final blow for the Accord. Consequently, the Constitutional climate of the early 1980s is of prime importance when analyzing the negotiations and outcome of the Meech Lake Accord, which will now be explored in further detail.

Chapter 6

Towards Meech Lake: the Process Begins

1984 Elections

While the Constitutional debacle of the early 1980s was clearly the catalyst which created the need for the Meech Lake Accord, the process itself only got underway following the final defeat of the Liberals under John Turner. Turner had replaced Trudeau, who said he would not run again for election, and faced off against Brian Mulroney. However, despite the general popularity of Trudeau, the Canadian public was tired of the Liberals, who had been in power almost uninterrupted since the late 1960s. The main problem faced by John Turner, besides this Liberal fatigue, was the make-up of his caucus: there were no MPs from British Columbia, Alberta, Saskatchewan or the Territories (Yukon and Northwest Territories), and only two from Manitoba⁶⁸. Therefore, in all of Western Canada there were only two representatives in the government, and over half the federal liberal caucus came from Québec. As a result, on the September 4, 1984 election Canadians resoundingly rejected the “new federalism” of the Liberal Party. The sweep was impressive: 211 out of 282 seats (or 75%) as was its generality, with at least 70% of the seats in each region of Canada⁶⁹. The Progressive Conservative Party of Canada finally put to rest the era of Trudeau and Lévesque – now, an English Quebecker embraced in Western Canada replaced a Liberal government led by a French Quebecker rejected in Western Canada⁷⁰. Thus began the Brian Mulroney era, and the Meech Lake process started.

⁶⁸ Blakeney, Allen E. “Commentary” in Thomas Courchene, Forever Amber. Queen’s University Press. Kingston, ON: p. 60-62

⁶⁹ Courchene, Thomas. 1990. Forever Amber. Queen’s University Press. Kingston, ON: p. 38

⁷⁰ Cohen, Andrew. 1990. A Deal Undone. Douglas & McIntyre Ltd. Toronto, ON: p. 19

New Promise to Québec

The whole rationale for the Meech Lake Accord was Québec. Chiefly, the damage done in the Trudeau era, specifically the passing of the Canada Act without Québec's participation, was meant to be rectified by the amendment negotiated at Meech Lake. This was done through a new promise made to the province by Brian Mulroney, and the culmination of the promise was the MLA⁷¹. Consequently, "the Meech round of Constitutional reform was called by its sponsors the 'Québec round' because they saw its purpose as winning Québec's support for the changes made to the Constitution in 1982"⁷². However, as will be demonstrated, there were several other actors who had an interest in the reform process besides Québec.

Actors

Natives

One of these groups was the Natives who, much like in previous Constitutional negotiations, felt that they were being ignored. They formed a "distinct category of opposition" to Meech Lake, and included what Section 35 of the Constitution Act, 1982 calls the "aboriginal people of Canada", defined as including the Indian, Inuit and Métis peoples of Canada⁷³. With the Meech Accord, they had several issues. The desire to grant Québec the status of being a "distinct society" was perceived as an insult because Native groups were not afforded the same status; similarly, the MLA's identification of French and English speakers as the two founding peoples without any mention of them was viewed as a betrayal on the part of the federal

⁷¹ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 143

⁷² Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians Become a Sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 154

⁷³ Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: pp. 25-26

government. The main reason for the opposition to these two measures is because “Indian leaders reject the application of the term ‘ethnic’ or ‘cultural minority’ to their peoples, and hence are hostile to being considered as just another strand in the multicultural mosaic”⁷⁴. Their opposition, which included protests, action by Native political representatives, and the use of the media to disseminate their message was facilitated through their identification with the international indigenous people’s movement and a supportive international climate which encouraged aboriginal peoples “and especially their elites to follow through strongly on their domestic goals”⁷⁵.

Lastly, they received support from the Canadian public, which also demanded a legislative approval requirement, later used by Manitoba Native politician Elijah Harper to kill the Accord⁷⁶. As a result of these problems surrounding Native rights and participation in the MLA, it became clear that aboriginal people had little sympathy for provincial governments and were losing their patience with Ottawa. Natives became one of the three main stakeholder groups which played a key role in the MLA process, yet they are unique because their demands were completely ignored. While Québec has frequently been opposed to federal government initiatives because of the threat to its culture, specifically the French language, Native groups have often sought the help of the federal government in their battles with provinces over their most important issue: land. Therefore, it can be said that land is to the Natives what language is to the Québécois – an issue of the utmost importance which they are ready and determined to settle,

⁷⁴ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. p. 120

⁷⁵ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: pp. 25-26

⁷⁶ Blakeney, Allen E. “Commentary” in Thomas Courchene, Forever Amber. Queen’s University Press: Kingston, ON: p. 62-63

notwithstanding the provinces⁷⁷. The two remaining actors, the provinces as a whole and then Québec, were integral parts of the negotiations and also played a large role in the eventual defeat of the MLA.

Provinces

The provinces constitute the second group of actors which had a great impact on the Meech Lake Accord. However, unlike the Native groups which were excluded, provincial governments were one of the three pillars of the negotiations, the other two being Québec and the federal government. Therefore, “the provinces” in this case simply refers to the remaining nine provinces of Canada, not including Québec. This group was certainly the most unwieldy at the negotiations: a conglomeration of 9 provinces, most of them have-nots, several governed by minority governments susceptible to the ebbs and flows of public opinion, and many of them speaking the language of regionalism. Indeed, by the 1980s “virtually every provincial premier ... learned that the language of regional identities was an excellent weapon in the battle for a larger share of the Canadian pie”⁷⁸. Still reeling from Trudeau policies such as the National Energy Program, which effectively minimized the profits of Alberta’s oil industry, and thus of the province itself, for the benefit of Central Canada in addition to the stark regionalism of the final Trudeau term in office, Western Premiers came to the Meech negotiations intent on demanding equal treatment for provinces. This attitude was backed up by public opinion, which had been forming in recent years in opposition to special treatment for Québec and the Free Trade Agreement with the United States which Brian Mulroney was intent on signing.

⁷⁷ Courchene, Thomas. 1990. *Forever Amber*. Queen’s University Press. Kingston, ON: p. 44

⁷⁸ Cook, Ramsay. 1986. *Canada, Quebec, and the uses of Nationalism*. McClelland and Stewart. Toronto, ON: p. 11

Consequently, this new strand of “English Canadian” nationalism was a blend of anti-Americanism and egalitarianism which underlay the attack on the MLA from the English parts of Canada⁷⁹. The 1988 election campaign which was being contested at the height of the Meech process was fought essentially on the Free Trade issue, yet its intertwining with Meech was unmistakable. The main argument against the Agreement, which would eventually pass and become known as the North American Free Trade Agreement (NAFTA), was that it would destroy the possibility of Canada being a distinct society. The irony of this position surely did not escape the Québec delegation at the Meech negotiations. The provinces all wanted different things, but generally agreed on several issues as well.

Whereas they thought that they could live with a clause which stated that Québec was distinct, they mostly were against any provisions which afforded Québec separate treatment from the others: it should not be treated as if it were “above” or “more equal” than the provinces. In the alternative, if Québec was to be given special powers, those powers should be generalized to all of the provinces, thereby making them equal to Québec. In some instances, such as immigration, a few provinces would be willing to return this power to the federal government while others would not. The provinces opposed a Québec veto on Constitutional amendments, and instead tended to favour a regional veto which would divide the country into four regions (the West, Ontario, Québec and the Atlantic provinces) and give each one a veto over Constitutional changes. While this was certainly better for the West than only Québec (and possibly Ontario) having a veto, many felt that it was still not enough as it implied that Québec, no matter what its future population or economic size (both of which were decreasing at the

⁷⁹ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians Become a Sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 144

time) would always be equal to the four Western provinces, some of which were experiencing economic booms, and most of which were speedily increasing in population.

The power of the provinces was cemented by the amending formula passed in 1982, which for the first time in history provided for the formal approval of provincial legislatures. As Blakeney states, this involved public hearings in some provinces, and potential delays in all of them⁸⁰. Any time the same deal is presented to ten different political units influenced by nationalism, regionalism and political expediency with a request that they all approve it, without amendments, the approval will almost always be slow in coming, if it comes at all. This is the amendment process, however, which was put in place in 1982 and it is inescapable. Therefore, the role of the provinces in the negotiations was perhaps the most important to their success; however, the frequent delays and susceptibility to domestic political pressure helped to eventually derail the Meech Lake Accord.

Québec's role in the negotiations

Québec was the last actor in the Meech Lake Accord which contributed to its failure. While much of English Canada felt that its demands were going too far, many in Québec felt that they were not far enough. Among the things desired by the government of Québec was a role in selecting Supreme Court judges, greater powers over immigration, a veto over Constitutional amendments, a limitation of federal spending power in areas of provincial jurisdiction, and explicit recognition as a “distinct society” along with the practical provisions in the Accord to put that recognition into practice⁸¹. When English Canadian public opinion and, as a result, politicians started to vocally oppose elements of the Accord, sentiment in the province of Québec

⁸⁰ Blakeney, Allen E. “Commentary” in Thomas Courchene, *Forever Amber*. Queen’s University Press: Kingston, ON: p. 62

⁸¹ Cohen, Andrew. 1990. *A Deal Undone*. Douglas & McIntyre Ltd. Toronto, ON: p. 6

was radicalized and turned not only against the Accord, but against the rest of Canada. Québec Premier Robert Bourassa viewed the Trudeau-imposed Charter as a restrictive force which limited the province's maneuverability in areas of importance, such as culture. They viewed the MLA as an opportunity to escape the Charter's restrictions, and thus the growing Anglophone rejection of Meech was viewed by many nationalists as another sentence in the "Canadian prison"⁸².

Furthermore, the issue of the "Triple-E" Senate was also brought up in the process, but not by Québec. Western provinces had been seeking such an upper house for a while, and hoped that the MLA process would finally make it equal, elected and effective. However, it was not to be as Québec was opposed to this arrangement which would reduce its power within that house⁸³. The fact that Western provinces only thought this provision would go through if made part of a larger document, such as the Meech Lake Accord, is what bound the two issues together. This constitutes yet another reason for failure, all of which will be analyzed in depth in the next chapter. It is apparent that the MLA "makes it clear that such questions as who is to receive Constitutional recognition as a distinct society, and what are to be included in the Constitution as fundamental characteristics of Canada are not dry technical matters but minefields of explosive emotions"⁸⁴. To put it simply, "the goal of French Canadians has always been security, and the strategy for its achievement is the recognition of equality"⁸⁵.

⁸² Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 24

⁸³ Ingle, Lorne. 1989. Meech Lake Reconsidered. Voyageur Publishing. Hull, QC: p. 24

⁸⁴ Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. pp. 14-15

⁸⁵ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 57

Excluding sovereignty, there are really only three ways for this equality to be achieved: some form of special status, which is uniformly opposed by the rest of the provinces; a generalization to all provinces of whatever status is determined for Québec, which was the Meech Lake approach; or, finally, sovereignty-association⁸⁶. While the first choice is simply not doable due to severe opposition from the provinces, the federal government is diametrically opposed to the last approach along with the provinces, who in general seek a united Canada. That leaves Québec, and the rest of Canada, with the Meech Lake Approach which was tried, and failed, twice (Meech Lake and Charlottetown Accords). In addition to the attempt to exclude the public from the reform process and the secretive negotiating process which employed back-channel methods such as personal meetings and telephone conversations, the MLA became symbolic of the divisions within Canada; and for reasons which had yet again placed the continued existence of the country as a single unit into doubt, the Constitutional reform process nurtured division among all sectors of Canadian society⁸⁷. Therefore, the Native groups, provinces and Québec all share a part of the blame for the failure of the Meech Lake Accord, and it seems evident that in the future, some way will have to be found for all to be appeased if Québec is to be brought into the Constitutional family.

⁸⁶ Smith, David, Peter MacKinnon and John Courtney. 1991. After Meech Lake: Lessons for the Future. Fifth House Publishers. Saskatoon, SK: p. 12

⁸⁷ Smith, David, Peter MacKinnon and John Courtney. 1991. After Meech Lake: Lessons for the Future. Fifth House Publishers. Saskatoon, SK: p. 7

Chapter 7

Meech Lake Accord: Contents

The Meech Lake Accord was meant to deal exclusively with the issue of Québec and its place in Canada, yet by the time it was a finished document it encompassed a variety of issues. The Accord dealt variously with the distinct society clause, the spending power of the federal government, the requirement for unanimity in Senate reform, a “Triple-E” Senate, the creation of a provincially-biased Supreme Court, immigration, gender equality rights, francophones outside of Québec and the amending formula, among other issues⁸⁸. How these issues were all included is a matter of history, but the point is that once it became apparent that the changes which would be brought on by Meech would become virtually irreversible, most provincial governments started requesting the inclusion of areas of interest which they believed would solidify their positions vis-à-vis the federal government in perpetuity⁸⁹.

Distinct Society

The most contentious issue in the whole Accord was certainly the distinct society clause. This included a section which affirmed that the whole Constitution of Canada, thus including the Charter of Rights and Freedoms, would have to be interpreted with the knowledge that Québec “constitutes within Canada a distinct society”⁹⁰. Perhaps unsurprisingly, the meaning of the term “distinct society” is left undefined by the MLA, and the vagueness of the term must be taken into account when analyzing the opposition to it from all sides. Some clues to what was implied by the term can be found within the text of the Accord. For instance, in its discourse, “the MLA includes a distinction between ‘state’ and ‘society’, especially when it addresses the question of

⁸⁸ Ingle, Lorne. 1989. Meech Lake Reconsidered. Voyageur Publishing. Hull, QC: pp. 13-16

⁸⁹ *Ibid.*, pp. 12-13

⁹⁰ Laforest, Guy. “Interpreting the Political Heritage of André Laurendeau” in Thomas Courchene, Forever Amber. Queen’s University Press: Kingston, ON: p. 101

the responsibilities of governments with regard to Québec and Canadian society”⁹¹. While this distinction may not be out of the ordinary in current political discourse, although some argue that when the two are dissociated, it is considered an anomaly or “a pathology to be dealt with”, when taken into consideration along with the aforementioned “distinct society” clause it can be reasoned that a distinct society would imply distinct state institutions, free of the federal government and able to act almost completely independently⁹². Interestingly, such an arrangement was and continues to be one of the main themes of the sovereignty movement within Québec.

A distinct set of institutions to govern a distinct society would see the Québec government withdraw from many dealings with other governments within Canada, and would presumably concern itself with the safeguarding of Québec’s culture, including language and way of life. The end result would be a further regionalization of Canadian society, with the complete re-emergence of the historical notion of “two solitudes” being put into practice; consequently, the “distinct society” clause is the Constitutional equivalent of ‘two solitudes’ and it would have left French speakers outside of Québec and English speakers in Québec as secondary Constitutional citizens⁹³. Therefore, the distinct society provision of the Meech Lake Accord was, in essence, a recipe for the institutional fragmentation of Canada along linguistic lines to an even greater extent than already existed and represented the abandonment of the English minority in Québec as well as the French minority in the rest of Canada. However, the “distinct society” clause was by no means the only proposed change found in the Meech Lake

⁹¹ Swinton, Katherine and Carol Rogerson. 1988. Competing Constitutional Visions: The Meech lake Accord. Carswell Publishing. Toronto, ON: pp. 6-8

⁹² Swinton, Katherine and Carol Rogerson. 1988. Competing Constitutional Visions: The Meech lake Accord. Carswell Publishing. Toronto, ON: pp. 8

⁹³ Ingle, Lorne. 1989. Meech Lake Reconsidered. Voyageur Publishing. Hull, QC: p. 56

Accord which would have effectively removed from the federal government influence in areas where it was previously predominant.

The Supreme Court – Guardian of Provincial Rights

Another such area of further “provincialization” was the provision in the MLA to reserve seats for provinces. Whereas the previous practice enabled the federal government to appoint Supreme Court judges without provincial interference, the new system would have required the federal cabinet to fill a vacancy based on a list of names prepared by provincial governments⁹⁴. In fact, this would have served as a recipe for the further decentralization of the federation, and judges would become servants of provincial rights much like American Supreme Court judges are appointed along ideological lines by the President. It can only be assumed that, had such a plan been implemented, federal judges would be beholden to the provincial governments which appointed them to the highest court in the country and would only be too willing to reciprocate by consistently judging in favour of provincial rights. What is more perplexing is how this decision was arrived at. While one would assume that the provinces pushed this sort of arrangement, it is a fact that most initially sought only guaranteed consultations on appointments, but the federal government gave more and that eventually led to the system mentioned above. Therefore, this provision would have represented the gradual withdrawal of the federal government from many aspects of public life.

However, even in this part of the Accord, the emphasis on Québec is apparent. In regards to Supreme Court appointments, an equality-of-regions viewpoint emerged which stipulated that the federal government had to arrive at a decision with the government of Québec for an

⁹⁴ *Ibid.*, pp. 25-26

appointee, but not necessarily so with the provinces. In practice, this meant that eventually Québec could get a judge which it wanted appointed, notwithstanding the federal government. However, this wasn't the case with most other provinces. For example, Western Canada as a whole, comprising British Columbia, Alberta, Saskatchewan and Manitoba were treated equal to Québec. If the federal government did not like an Alberta nominee, they could ask for names from other Western provinces until they saw a nominee which they liked, which would then be appointed⁹⁵. While one might assume that this is not that contentious after all, because the appointee would in any case be a servant of provincial rights, this is not truly representative of the whole picture: the Supreme Court, of course, judges on many other matters which do not deal in any way with provincial rights.

Western Canada has a very varied political tradition, with strong populist undertones and frequent variations in provincial governments between far-right and far-left parties. For example, for the better part of the last three decades, Saskatchewan and Manitoba have been governed by the avowedly socialist New Democratic Party, while Alberta has for a long time been governed by a far-right Conservative Party. British Columbia is known as being perhaps the most politically unstable Canadian province, and it is not unusual to see alternating far-left and far-right wing provincial governments. Therefore, if Alberta would submit the names of a few Conservative judges and the federal government did not like the choice, they could solicit names from any of the other 3 provinces and decide upon a judge who may be just as beholden to provincial rights, but in other areas could be the ideological opposite of our make-believe Albertan nominee. Québec would simply not have to deal with these issues, and therefore this

⁹⁵ Russell, Peter. "Meech Lake and the Supreme Court" in Katherine Swinton and Carol Rogerson, eds., Competing Constitutional Visions: The Meech Lake Accord. 1998. Toronto, ON. Carswell Publishing: p. 133-135

arrangement represented an implied inequality between provinces, and this was unacceptable to many governments, and to most of the general public, in the negatively affected provinces.

In addition, there are other issues with respect to the Supreme Court appointments process which the Meech Lake Accord did not settle. For example, it reserved for Québec three out of the nine seats on the court, and left the rest of Canada to compete for the remaining six. Given the fact that Québec only has six million inhabitants, with the rest of Canada containing the remaining 24 million, a guaranteed 1/3rd of the seats obviously seems unfair, especially given the fact that Ontario, by far the most populous province with the largest economy, would be placed in a position of inferiority in relation to its eastern neighbour, Québec. Similarly, nothing is mentioned of the resolution process in the case that the federal government is unwilling to approve any of the provincial nominees; there is no mechanism in the Accord for settling the impasse other than leaving the seat vacant⁹⁶.

Secondly, the Accord does not make it clear how many nominations an individual province may submit – presumably, a province could submit several names, or just one. Thirdly, with only six non-Québec seats, no province can have a strong expectation that its nominee will receive the appointment: a high level of frustration with the system would be likely to soon appear on the part of the provincial governments, and this could lead to more calls for reform, or worse⁹⁷. Furthermore, while the Supreme Court is thought of as a national institution and a symbol of unity, it would in effect represent regional, political interests and be divided along linguistic lines. Potentially, then, it could become a symbol of Canadian disunity and become a lightning rod for critics of the current system. Lastly, the Territories were not included in the

⁹⁶ Bowker Montgomery, Marjorie. 1990. The Meech Lake Accord: What it will mean to you and to Canada. Voyageur Publishing. Hull, Quebec: p. 30-31

⁹⁷ *Ibid.*, pp. 30-31

Supreme Court provisions, effectively excluding them from the nominating process since they are not yet Provinces. Therefore, the issue of Supreme Court Reform is clearly a contentious one, and a veritable plethora of issues were raised by it, all of which gave one actor or another more than enough reason to oppose the Accord. Clearly, this part of the document was not well thought-out, as it would inevitably become a source of great discontent in many parts of Canada.

Creation of Provinces

The MLA further handicapped the power of the federal government by requiring unanimous consent for the creation of a new province, whereas the 1982 Constitution only required 7/10 provinces to consent. While this undoubtedly made certain that a province would not be created without the consent of all provinces, thereby potentially eliminating sources of conflict, this provision had the effect of further marginalizing the Native population which aspired to the creation of a province of their own out of the Territories in the North. Due to historical provincial-Native antagonism, Native groups were justified in their fears that this meant that no new province could be created due to the likely opposition of the provincial governments to their claims for land and political rights.

Senate Reform

In addition, Senate reform was also an issue which created controversy at the Meech Lake negotiations. The Accord contained provisions that gave every province a veto over Senate reform, however unlike the previously mentioned veto on the creation of provinces, a Senate-reform veto would have been highly divisive as some provinces were determined to keep their preponderance in the Senate whereas others, particularly Western provinces, wanted an equal

amount of seats for all⁹⁸. This issue was brought up by the West, however opposition came from Québec, which made it clear that whatever reform was implemented would have to maintain Québec's positions of 24 seats out of 104, the same as Ontario's amount. Clearly, while Western provinces wanted an equal amount of seats, and Québec wanted to maintain its position in relation to the others, in conjunction with the veto given to any province on the issue, there was not likely to be any agreement on Senate reform as envisioned by the Meech Lake Accord.

Immigration

Immigration was also another area of the Meech Lake Accord which envisioned the empowerment of the Québec government. The Accord gave the Province of Québec a power over immigration which the other provinces, at least for a time, would not have⁹⁹. In addition to a guaranteed share of immigration, roughly equal to its proportion of the Canadian population (25% at the time), plus 5% if so desired by the government of Québec for demographic reasons, the province received the ability to integrate these immigrants into society which up until that time was largely a federal responsibility¹⁰⁰. This brought up issues of loyalty, as the power given over to the Québec government to integrate immigrants would naturally put the focus on Québec rather than Canada, perhaps creating a group of people which had no aspirations of participating in Canadian society.

⁹⁸ Russell, Peter. "Meech Lake and the Supreme Court" in Katherine Swinton and Carol Rogerson, eds., Competing Constitutional Visions: The Meech Lake Accord, 1998. Toronto, ON. Carswell Publishing: p. 141

⁹⁹ Leslie, Peter M. "Submission to the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord" in Clive Thomson" (ed.) in Navigating Meech Lake: the 1987 Constitutional Accord, 1988. Institute of Intergovernmental Relations. Kingston, ON: pp. 14-15

¹⁰⁰ Bowker Montgomery, Marjorie. 1990. The Meech Lake Accord: What it will mean to you and to Canada. Voyageur Publishing. Hull, Quebec: p. 22

The Outcome

As a result of the contents of the Meech Lake Accord, which placed Québec's demands for more powers in the spotlight, there was a reinforcing of the tendency of Canadian federalism to be understood as the government of governments rather than the government of the people. Meech Lake was the final *reductio ad absurdum* of this tendency, and proved yet again that the power of the executive federalism philosophy was not only strong, but very well entrenched into the fabric of the Canadian political system and its elite. The further entrenchment of an endless series of conferences on the Constitution which were to follow after Meech Lake to iron out the unsolved issues found therein legitimated a new order of government: that of the rule by a very small and secretive group of elites which would arrive at decisions out of the public eye, behind a thick blanket of security and only emerge when it was time to inform the general public of their accomplishments.

As a result of all of these factors, the outcome of the Meech Lake Accord can best be characterized as a "provincializing round"¹⁰¹, as it sought to significantly regionalize the country and weaken a sense of nationhood that was promoted by the federal government. Therefore, the contents of the Meech Lake Accord, the most important of which are the distinct society clause, Supreme Court appointments, Senate reform, the creation of provinces and immigration powers all created, on their own, a storm of controversy. However, when they were combined into a single document, the outcry was so drastic and so negative, from nearly all sectors of Canadian society, that the proposed Constitutional reform package had almost no chance of passing. Now, we will see which actors were opposed to what parts of the MLA and why, followed by an analysis on how the Accord was finally killed and for what specific reason.

¹⁰¹ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 156

Chapter 8

Reasons for Failure

As has been demonstrated, the Meech Lake Accord dealt with a variety of Constitutional issues; however, as a set of symbolic affirmations, the Accord is somewhat unbalanced. While acknowledging the Québec problem and seeking to satisfy that province while keeping the rest of Canada happy, the Constitutional negotiations ignored Native issues, women's groups, and finally public opinion in all of Canada. Therefore, it can be said that the MLA "selectively reaffirms certain realities, objectives, and governmental responsibilities but ignores others"¹⁰². The emphasis on the terms "founding people" and "distinct society" were no doubt seen by minorities as a rebuff, and were taken to be an indication that the multicultural components of Canadian society "are not to enjoy equivalent Constitutional status" with the founding peoples; in other words, these groups perceive their Constitutional recognition as precarious and as being constantly threatened by the tendency of power-holders to forget their existence¹⁰³. Therefore, a primary reason for failure was the neglect of certain Constitutional stakeholders.

Minority Groups

However, the manner in which the Accord was defeated by these groups demonstrated their growing relevance in civil society. These minorities, such as women's groups, cultural organizations and Natives, had all been mobilized during the original constitutional negotiations in the early 1980s and therefore had the infrastructure and know-how in place to effectively challenge policy at the national level yet again. Indeed, all of these groups learned how to garner media attention during the struggle over the Canadian Charter of Rights and Freedoms, and saw

¹⁰² Swinton, Katherine and Carol Rogerson. 1988. Competing Constitutional Visions: The Meech Lake Accord. Carswell Publishing. Toronto, ON: p. 8

¹⁰³ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 120

their exclusion from the making of the MLA as a risk to their previous Charter victory¹⁰⁴. They proceeded by grassroots political action: signing petitions, pressing politicians on the issues and raising media awareness. Combined with a growing surge of nationalism in English Canada, these civil society groups found a lot of support for their grievances and became well-funded, well-supplied and well-staffed organizations. In other cases, governments directly supported civil society groups, as was the case in the Territories. Having already been dealt a blow in 1982, which made provincehood contingent on seven out of ten provinces agreeing, they were now facing an increased restriction to their aspirations: unanimous consent. Naturally, Territorial governments were sympathetic to their concerns and relayed their concerns to media outlets, which added increased legitimacy to these minority groups¹⁰⁵.

These marginalized groups also found support in a specific federal party which was marginalized from the political process: the New Democratic Party (NDP). This left-wing organization had never held power at the national level, but up until the 1993 re-aligning election it represented a solid “third force” in Canadian politics whose impact, due to the intricacies of the first-past-the-post electoral system and the convention of party discipline, was often minimized. For NDP MP Howard McCurdy, the Accord’s message “to a third of the population – the Blacks, the Ukrainians, the Poles, the Italians, ... and the variety of other people who compose my riding – [is] that they are not really an inherent part of the country”¹⁰⁶. The single-minded emphasis on Québec is what created and eventually killed the MLA, and for better or worse, minority groups had a lot to do with that slow, agonizing death. Constitutional scholars

¹⁰⁴ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians become a sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 143

¹⁰⁵ *Ibid.*, pp. 143-144

¹⁰⁶ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 172

have agreed that “Meech Lake failed more because it was seen as a threat by a variety of organized interests than because the rest of Canada was unable to respond to the opportunities for federal restructuring presented by Québec”¹⁰⁷. Therefore, any future attempt to re-open the constitutional debate must take into account the multicultural nature of Canadian society and engage these stakeholders, or otherwise risk being delegitimized by an active, organized and relatively powerful civil society comprised of women’s groups, northerners and ethnic minorities.

If minority groups became a primary obstacle to the success of the Meech Lake Accord, then it is undeniable that their position of power was facilitated, or even enabled, by the strong reactions which emerged from English Canada in response to the issue of Québec. Public perceptions, whether accurate or not, are undeniably the most important factor in public opinion. These opinions, in turn, shape the constitutional agenda of a nation through pressure on politicians by their constituents. Therefore, the public outcry which emerged following the actions of the Québec government in overruling the Charter through the notwithstanding clause helped to radicalize public opinion, and was directly attributed to three provinces withdrawing their support for the Meech Lake Accord.

Notwithstanding Clause

This dispute in Québec happened following the Supreme Court’s ruling that the Québec sign law, which required all exterior commercial signs to be in French exclusively, was a violation of Charter rights. In Québec, the response was one of anger: nationalists protested and demanded Bourassa use the notwithstanding clause on the law, whereas the general consensus in

¹⁰⁷ Smith, David, Peter MacKinnon and John Courtney. 1991. After Meech Lake: Lessons for the Future. Fifth House Publishers. Saskatoon, SK: p. 9

English Canada was one of hoping that the Premier would take the Supreme Court's advice and amend the law, requiring French to be the predominant language, but still allowing English in smaller fonts. Bourassa succumbed to nationalist pressure and used the notwithstanding clause, thereby sparking heated criticism from the rest of Canada and from English speakers in Québec; Peter H. Russell described this reaction as "equally tribal" to the one in Québec upon hearing that the Supreme Court ruled the law was unconstitutional¹⁰⁸.

The reaction in the rest of Canada to the use of the notwithstanding clause is understandable only if its significance is fully comprehended. It was not just a private matter for Québec, but rather a Constitutional issue for Canadians: in rights matters, "provincial politics is not insulated from external judgments by the division of powers"¹⁰⁹. In other words, when Charter concerns are at stake, the watertight compartments of federalism dissolve and the issue becomes a Canadian issue; to borrow an old saying and use it for our purposes, the general feeling was that a threat to rights anywhere is a threat to rights everywhere. Therefore, as Cairns states, "the Meech Lake outcome is explicable only if we appreciate how the Charter's taking root in English-speaking Canada has major consequences for the Constitutional reform process"¹¹⁰. Therefore, it can also be stated that the major source of opposition to Meech Lake in English-speaking Canada came from supporters of the Charter of Rights and Freedoms. This is a catch-all statement which can also include minority and women's groups. Public perception is yet again responsible for this. The Charter is an extremely liberal document which granted sweeping rights to most in society; consequently, its supporters can be viewed as supporters of a

¹⁰⁸ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians Become a Sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 146

¹⁰⁹ Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 24

¹¹⁰ Cairns, Alan C. "The Charter, Interest Groups, Executive Federalism and Constitutional Reform" in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. p. 24

liberal society where the government does not interfere in the life of the individual. Meech's main fault was its perceived empowerment of the Québec National Assembly to dictate language practices and, hence, to allow the State to shape the social climate of a free society. In English Canada, this was unacceptable, and therefore it becomes apparent why there was such strong opposition to the MLA and its perceived support of Québec following the use of the notwithstanding clause by Premier Robert Bourassa.

Provincial Concerns

Provincial governments played their part as well. While, at the beginning, most seemed to favour the Meech Lake Accord, it soon became apparent that ratification would not be easy. Riding the wave of public discontent stemming from the Meech Lake Accord and the impending implementation of NAFTA, Liberal governments began to replace Conservative ones which had previously been helped by the popularity of Brian Mulroney, the Conservative Canadian Prime Minister. A Liberal government was elected in New Brunswick and its leader, Frank McKenna, soon refused to sign the Accord. In Manitoba, a Conservative minority government depended upon the Liberal party for support; however, when Meech became a pressing issue, the Liberals said they would topple the government if they tried to ratify the Accord. Manitoba Premier Gary Filmon, head of the minority Conservative government, stated that the use by Québec of the notwithstanding clause was what turned him against the MLA. In Newfoundland, the Liberal government under Clyde Wells became one of the most vocal opponents to the Accord after it took over from a Conservative government led by Brian Peckford, and refused to sign the amendment. All of this makes it clear that “after Bourassa’s decision to use the notwithstanding

clause, there was virtually no chance that the Meech Lake Accord would be ratified”¹¹¹. In these conditions, where provincial consent was required, it is no surprise that the MLA failed: its perceived illiberalism severely hurt its chances of success in English Canada.

Native Groups

The Native groups in Canada were perhaps the most celebrated opponents of the Meech Lake Accord. They had serious concerns with the Accord. The previous characterization of the reform package as a ‘provincializing round’ should provide clues as to why – the Natives have historically been opposed, within Canada, by provincial governments with whom they have had countless land battles. Firstly, and most significantly, the MLA recognizes French and English rights; however it denies recognition to Canada’s Natives as a founding people, despite the fact that they are the first peoples of the continent. Beyond the simple issue of the neglect of Natives as a distinct, separate society within Canada, the MLA proposed many changes which would have negatively affected Canada’s first peoples. For example, the MLA allows education of Natives to be transferred to the provinces under the condition that they maintain the goal of “the education of Indians”. Interestingly, standards are not set for the quality of this education, and it could easily be of lower quality than that which was currently offered. Lastly, the aforementioned issue of the proposed method for selecting Supreme Court appointees – from provincial lists – would ensure that the highest court in the country would be filled with pro-provincial rights judges, which by implication would be against Native rights.

Indeed, it seems that the Accord is oblivious to the fact that the Aboriginal people “will be hurt by its provisions, though it has taken kindly concern about the welfare of everybody who

¹¹¹ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians become a sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 147

in its view really counts”¹¹². This obliviousness is best demonstrated by the distinct society clause, which claims to articulate a fundamental characteristic of Canada; the obvious implication is that the Natives do not comprise one of these fundamental characteristics. In addition to simply ignoring Natives, and giving away the responsibility for their education to provinces, the MLA would have “diminished Constitutional tolerance for effective expressions of aboriginal sovereignty” and would have distorted Constitutional acknowledgements of aboriginal rights¹¹³. With this in mind, Natives mobilized into a loose national grouping which was centered on their cultural communities and opposed to the perpetuation of a “habit of mind that produced provisions like that of the 1876 Indian Act which stated that ‘the term ‘person’ means an individual other than an Indian”¹¹⁴. This anti-MLA sentiment was best captured by a spokesperson for the Nishnawbe-ski Nation, who lamented that “we are the first nations of this country and we have been left out of Meech Lake. They do not want us...it is our land and resources that built your country”¹¹⁵.

Although there was strong and vocal opposition from provinces, women’s groups, minorities and even some people in Québec, in the final analysis it was the Natives who killed the Meech Lake Accord. Specifically, Manitoba NDP MPP Elijah Harper, a Native, knew well that Western politicians had been opposed to the concept of Native self-government as they believed it was too ill-defined to be included in a Constitution, yet readily accepted the equally vague concept of a “distinct society” for Québec¹¹⁶. When provincial politicians told the Natives

¹¹² Swinton, Katherine and Carol Rogerson. 1988. Competing Constitutional Visions: The Meech Lake Accord. Carswell Publishing. Toronto, ON: p. 11

¹¹³ Swinton, Katherine and Carol Rogerson. 1988. Competing Constitutional Visions: The Meech lake Accord. Carswell Publishing. Toronto, ON: p. 11

¹¹⁴ *Ibid.*, p. 11

¹¹⁵ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 172

¹¹⁶ Cohen, Andrew. 1990. A Deal Undone. Douglas & McIntyre Ltd. Toronto, ON: p. 259

to “wait” for another Constitutional round, it was the last straw, and Elijah Harper voted to block a motion on the discussion of the amendment in the Manitoba legislature, effectively killing the MLA. He instantly became a national hero among those who opposed the Accord, and stated that the decision to postpone Native negotiations was a primary reason for his decision¹¹⁷.

While Elijah Harper was viewed in the Native community as a defender of Native rights, in the rest of Canada he became the defender of the people: he stood up to the political elite, and won. The contradiction was apparent: 11 men behind a thick veil of secrecy and security were defeated by one Native politician in Manitoba. It was clear that his action reflected Canadian public opinion: a poll on March 8th, 1990 reported that only 24% of Canadians thought that the Accord would be “a good thing” for Canada; nine months earlier it was 31%, and in 1987 a full 59% believed the MLA was good for Canada¹¹⁸. Clearly, the Accord had run its course and it was no longer a viable option: the people and several provinces had turned against it.

¹¹⁷ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians become a sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 132

¹¹⁸ Cohen, Andrew. 1990. A Deal Undone. Douglas & McIntyre Ltd. Toronto, ON: pp. 221-222

Chapter 9

After Meech Lake: What's Next?

It seems clear that any future successful Constitutional amendment must take into account the frequently opposing forces of Québec nationalism, aboriginal self-empowerment, regional alienation and Canadian nationalism. For a successful outcome, it must be understood that no deal is possible if any one of these competing movements are pushed too far; but of course, this is easier said than done. While aboriginal self-empowerment and Canadian nationalism were crucial factors in eventually destroying the Accord, it does not seem likely that these two forces could one day end up splitting the Canadian federation. On the other hand, Québec nationalism has already demonstrated that it is ready, willing and able to secede from Canada whereas growing regionalism in certain parts of the country has led to the formation of independence-minded parties with separation from Canada as a first priority. Although these groups are small, they thrive on political discontent and another failed round of constitutional talks could have unforeseen consequences for the country. Following the failure of the Charlottetown Accords, the successor to Meech Lake, the Reform Party of Canada emerged and argued for a decentralization of the federation – unsurprisingly, this group was a highly regionalist party and used as its slogan “The West Wants In”. Consequently, I tend to agree with Peter Russell’s assessment that Québec nationalism and its English Canadian equivalent, regionalism, pose a threat to the continued existence of the country as a single unit and that the only way to placate these two groups would be some type of amendment which is viewed as acceptable to both¹¹⁹.

¹¹⁹ Russell, Peter H. 1993. Constitutional Odyssey: Can Canadians become a sovereign people? 2nd edition. University of Toronto Press. Toronto, ON: p. 155

Thomas Courchene blames differing conceptions of the country. He believes that what ruined the Meech Lake Accord was the clash of two conflicting views of what federalism and Constitutional amendments are all about, and that until a general consensus is reached on these issues that no Accord is possible¹²⁰. Similarly, he holds that the best solution to Canada's Constitutional differences is that all the provinces be given massive federal powers temporarily and then hope that all the provinces, except Québec, hand back the powers to Ottawa. While this viewpoint assumes that there is a way to overcome these divisions, authors such as Alan Cairns take a more pessimistic view and point to the history of Canadian Constitutional reforms – and their inevitable failures – as factors conspiring against any future positive outcomes. Namely, he points to the failure of the Fulton-Favreau amending formula of the mid-1960s, the Victoria Charter of 1971, Bill C-60 of the late 1970s and the four unsuccessful aboriginal Constitutional conferences of the mid-eighties as testaments “to the resilience of the discredited old order that so many would like to leave behind”, which implies that a “new order” would first have to be created to at least give a chance to a future Constitutional amendment's success¹²¹. Perhaps this explains why today's politicians are eager to stay away from re-opening the constitutional debate.

But what could this “new order” comprise? Clearly, it can only be a departure from current methods of negotiation. As already mentioned, these include the practice of executive federalism which brought on the exclusion of large portions of Canadian society and did not give ordinary citizens a voice in the process. But what is the alternative? An entirely open public debate could further radicalize and mobilize interest groups and expose just how deeply divided

¹²⁰ Courchene, Thomas. 1990. Forever Amber. Queen's University Press. Kingston, ON: p. 41

¹²¹ Cairns, Alan C. “The Charter, Interest Groups, Executive Federalism and Constitutional Reform” in David Smith, Peter MacKinnon and John Courtney. After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 15

Canadian civil society really is. It seems that there is simply too much to deal with, and that too much consent is required from too many disparate groups. What, then, could be a solution?

Suggestions for the Future

I propose an overhaul of the Constitutional negotiating system which would institutionalize a mechanism to solve disputes on an issue-by-issue basis, starting with the least contentious ones. It appears wisest to include the public in these debates, whose opinions would then be molded by some sort of independent, non-partisan panel and be presented in an open manner to the politicians. Of course, the variety of opinion would be staggering. This is where the work of politics comes in: a common ground must be found. This would serve to build momentum for more pressing issues and would give key actors valuable experience in pushing for their position. As in the past, the role of the federal government should be to moderate between the competing sides but maintain a strong focus on arriving at some form of mutual understanding. A key lesson of the past is that long grace periods for legislatures to adopt the bills are unworkable. Once a deal is reached, no longer than a few months should be given for legislatures to vote the amendment up or down: if voted down, then there would still be a measure of momentum left over from the original process to attempt and get it right the second time around.

This position agrees with Lederman's suggestions of regionally-based commissions, with aboriginal representatives on each one and formed with extensive public consultations¹²². However, when the issue of Québec would come up, Lederman suggests that two sub-conferences should be held with the federal government meeting with the English provinces and

¹²² Lederman, W.R. "Charter Influences on Future Constitutional Reform" in David E. Smith, Peter MacKinnon and John Courtney eds., After Meech Lake: Lessons for the Future, 1991. Fifth House Publishers. Saskatoon, SK: p. 116

the French speaking province(s) (possibly including New Brunswick in both negotiations) separately in an attempt iron out a deal. Of course, this is not a departure from the tradition of executive federalism, but rather re-enforces the already-tested method of excluding public debate and is therefore more likely than not to fail. Public opinion, which will inevitably decide on the Accord's fate, can not be expected to favour a proposal which it was denied a chance of influencing in the first place. As Cairns writes, "the way in which citizens and elites come to view the political world is immensely consequential for political development" and therefore neither must be ignored, and the general population should not be treated as it has previously been¹²³.

The time to do this would be now. Periods of Québec nationalism are highly cyclical, and usually increase as a result of political events. The last such increase was due to the failed Constitutional amendments of Meech Lake and Charlottetown. Polls showed, following the collapse of the MLA in 1990, that a majority of Canadians were concerned for the survival of the country¹²⁴. Currently, nationalism is in decline in Québec and the rest of Canada – a product of the post-1995 referendum fatigue which effectively put a halt to national debates up until the current period. But, interestingly, in Québec the second cause of decreasing nationalism is nationalism itself. In this province, "the social transformation that had aroused nationalist fervour had run its course" as the Quiet Revolution largely succeeded in its main objective: the modernization of Québec's institutions¹²⁵. French is now the dominant language in virtually every aspect of Québec society, and it can no longer be legitimately argued that it remains in a

¹²³ Cairns, Alan C. 1991. Disruptions: Constitutional Struggles from the Charter to Meech Lake. McClelland and Stewart. Toronto, ON: p. 182

¹²⁴ Martin, Robert, "The Charter and the Crisis in Canada" in David E. Smith, Peter MacKinnon and John Courtney eds., After Meech Lake: Lessons for the Future. 1991. Fifth House Publishers. Saskatoon, SK: p. 121

¹²⁵ Cook, Ramsay. 1986. Canada, Quebec, and the uses of Nationalism. McClelland and Stewart. Toronto, ON: p. 17

critical position in North America, although some alarmists still do. Furthermore, the only actual, ongoing threat to this language is the continuous economic slump which Québec has been in since the onset of separationist politics in the 1970s – it seems logical that a good way to reverse this would be to once and for all confirm the province's place within Canada through signing a constitutional amendment which should settle the nationalist issue. The alternative, independence, has been tried twice and failed on both occasions.

It must be recognized that Québec is determined to get to a place where it feels equal and safe in the context of Anglophone North America, and that this will occur, one way or another, Canada notwithstanding. Québec has this option, whereas other groups, such as Natives and minorities, do not. They can not carve out their own region and choose to secede from Canada. However, this does not make them any less important. These groups demonstrated their willingness to block and eventually kill a constitutional amendment which they felt did not meet their needs. As a result, they can not be ignored. The goal of the rest of the country, then, should be to accommodate these claims and to project them onto the remaining provinces so that Québec feels secure, and the other provinces are treated equally. When and if this happens, the politicians of Canada will have completed a service to the country and would have gone a long way in restoring faith in the system which was lost during the Trudeau and Mulroney years.

While historically it was said that Canada was comprised of “two solitudes” – the English and the French – today there are at least three, and potentially many more. Natives are just as isolated, though more spread out, from their respective societies as the English are from the French and vice-versa. In addition, they are undoubtedly more marginalized. The colonial mentality of Canada's leaders placed the country in a position where many issues were left

unsolved. These issues could and should be resolved once and for all, and only then will Canada be able to find the security within to become a country with strong national pride cutting along all national, ethnic, religious and linguistic barriers.

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