

time around and say: "Well, this is the Québec consensus and here we go." I think that other provinces, quite legitimately, will ask that the Québec population say something clearly, and not only in an election. So there is more and more talk of an early referendum once the work of the Belanger-Campeau Commission is completed.

Ontario's throne speech in November 1990 stated in a very bland way — I was quite surprised that they didn't seem to have one idea about constitutional issues — that the next five years will be crucial for the settling of Canada's constitutional problems. I think that they've got the numbers wrong (and you might say that that happens from time to time). By next summer, one moment of truth might be upon us.

For my part, I am still of the view that a meeting of minds is possible if there is, in places such as this one, a deep desire for change, and not only for a Triple E Senate.

Lise Bissonnette, Publisher, *Le Devoir*.

[This essay is an edited version of a presentation before Alberta's Constitutional Reform Task Force, Roundtable III, November 23, 1990 "Restructuring Federalism"].

1. Don Braid and Sydney Sharpe, *Break Up: Why The West Feels Left Out of Canada* (Toronto: Key Porter Books, 1990).

CANADA AND QUÉBEC PLAYING CONSTITUTIONAL CHICKEN: THE VIEW FROM AN AUSTRALIAN PEDESTRIAN

Greg Craven

Over the past five months, I have toured Canada talking on the general subject of secession, with specific application to the present Québec-Canada scenario. My slender qualifications for this pilgrimage to Montreal via Vancouver, Calgary, Edmonton, Halifax, Victoria, Kingston, Toronto and Saskatchewan is that I have written a book on the subject of secession in Australia, which naturally also seeks to place secession in a rather more general context. Thus, any perceptions which I may bring to the present vexed topic of Québec's secession from Canada are confessedly not those of a Canadian constitutional expert: rather, they are the views of one who knows something about secession from federal states, but who does not profess to know a great deal about secession from Canada. I will attempt to make a few succinct points which seem to me be worth setting down.

The first is that judging the situation not by reference to timeworn truisms of Canadian constitutional debate ('Québec has whined for two hundred years, she'll whine for another two hundred, there's no problem'), but rather from the perspective of the common course of secession movements in federal states, the situation is very serious indeed. What Canada faces in Québec is a separatist movement of long-standing, fuelled by ancient feelings of ethnic difference and intensified by a perception of recent and continuing ill-treatment. Such movements are of extraordinary potency

and danger to their parent states, as multiple historical instances attest.

Moreover, there can be little doubt that the emotional engagement between Québec and English-speaking Canada has been dissipating on both sides over a long period of time — a process accelerated by the recent contretemps over Meech Lake — and is now rapidly approaching the point at which even the minimal degree of involvement represented by mutual dislike has been replaced by the indifference of an irritated weariness. The truth is that, like some battle-scarred couple, Québec and Canada appear no longer to care very much, and it is precisely this feeling of disengagement that has caused other federations to reel and some to totter in the face of secession movements. To anyone who has been a student of secession movements in other federal states, whether in America, Australia or elsewhere, Canada shows every sign of being a federation on the very edge of disintegration.

Of course, to many Canadians, this will be anathema. I have already branded myself as, at best, a doom-sayer (and an ignorant foreign doom-sayer at that), and probably as something worse: a 'Meechie', or even (yes, I have heard the term used) a 'collaborator'. To such Canadians I will add insult to injury by suggesting that they themselves in fact fit

precisely into the pattern of a federal state facing a grave secession crisis. For one of the most common reactions of partisans of a parent state in such a crisis is to deny the existence of any problem. Such behaviour was profoundly apparent in the United States prior to the American Civil War, and was equally evident in my own country at the time of Western Australia's concerted attempt to secede during the 1930s. No-one wants to face the disintegration of their country, with all the implicit and explicit statements of rejection that this will involve, and certainly no-one will want to accept the awful necessity of facing the crisis and seeking to resolve it. Far better in all the circumstances to resolutely deny its existence, and peremptorily to execute any messengers of disaster that might stray across one's path. A recognition of this strategy of 'desperate denial' helps explain why its proponents treat prophets of Québec's separation not as the poor fools that they profess to believe them, but more like rabid dogs.

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Of course, even some profoundly confident Canadian constitutional pundits have been forced to recognize in the light of the failure of Meech Lake, the increasing belligerence of Québec and the proliferation of constitutional road-shows, that there is currently some problem in Canada's constitutional arrangements, and that the relationship between Québec and Canada lies at the heart of this problem. But even here, denial has its role to play. The cry becomes not 'There is no problem!' but 'Yes, there is a problem, but it will be easy to solve.' From this phenomenon sprouts countless confident prophecies that the Canadian genius for compromise will carry the day, that only minor adjustments to the federal structure are needed, that Canada can easily and painlessly transform itself into some North American Switzerland, *et cetera*. At no point are the quite terrible dangers recognized and realistically considered, or any detailed blueprint for the future set out.

What seems to remain hidden from large sections of the Canadian people, both within but particularly without Québec, is that the secession of that Province will carry with it consequences potentially far more serious than the

recalling of existing political maps of Canada. There exists a common attitude in English-speaking Canada to the effect of 'Let them go!'. But there is a critical failure to appreciate the fact that the removal of Québec from the Canadian federal equation will almost certainly destabilize the entire federation. At the very least, this will necessitate a wholesale recasting of political relationships, and possibly the disintegration of the national structure. Why, for example, would Western Canada remain in the long-term within a truncated national union with the much-hated Ontario? Why would Ontario, once the heat of the moment had passed, prefer Western Canada to Québec? To anyone hopeful of Canadian unity, these are important and not readily answerable questions.

Even grimmer issues arise. Most Canadians assert that whatever else is true, violence is not a possibility in connection with the secession of Québec. It is difficult even to be polite about this pious platitude. Secessions are inherently unstable political events of the utmost unpredictability; no-one can rule out the possibility of violence. To take one scenario only: Québec secedes; it nervously awaits the reaction of English-speaking Canada; the native population of Québec rejects secession; barricades are erected; Québec determines on a swift, surgical removal of the problem; tension in the rest of Canada mounts; pressure builds on the Canadian government to intervene; Québec's operation is mishandled, with consequent loss of life; outrage erupts across Canada. Anyone who is prepared to dismiss such a scenario and its escalation into broader violence as simply implausible is either not thinking straight or not thinking at all. Nor is this by any means the only 'fact pattern' which could be put forward as a genesis for the outbreak of violence.

One thing that all this strongly suggests is that those from either side who are prepared to contemplate secession should think long and hard as to the price that they are prepared to pay, and as to the risks that they are prepared to run. In English-speaking Canada there is a tendency to think that the underlying equation in the whole impasse concerns what the rest of the nation is prepared to concede to Québec out of the goodness of its heart. This is quite wrong, and Canada should simultaneously cultivate the constitutional virtues of realism and self-interest. The real issue is quite simple for the rest of Canada: what is the continued presence of Québec worth to them? It is here that visions of wider disintegration and the outbreak of violence are highly relevant. To both paraphrase and contradict Kennedy, Canadians should be asking themselves not what they can do for Québec, but what Québec can do for them. Paradoxically, the answer to this latter question

will be far more productive of intelligent concessions to Québec.

"There is a critical failure to appreciate the fact that the removal of Quebec from the Canadian federal equation will almost certainly destabilize the entire federation."

Unfortunately, Canadians are not asking themselves this question. Tragically, the very horrors that may well flow from the secession of Québec are seen not as reasons for negotiating, but are rather triumphantly put forward as facts demonstrating that this eventuality could never come to pass. It is all rather like the argument that there is no need for nuclear arms control, because a nuclear war would be so horrible that no-one would ever start one.

So what does this particular presumptuous foreigner believe that Canada should be doing? The answer is,

critically, that it should be doing something, anything, rather than simply waiting for the blow to fall while denying that any arm is raised against it. On my assessment, Canada faces probably its gravest constitutional crisis. Big problems require big responses. Time has passed by solutions of the type offered by Meech Lake, and was never even on the same road as the risible Spicer Commission. When a nation faces disintegration, the only option is reintegration, and this is a work of constitutional creation, not tinkering. Eighteen sixty-seven comes around again next year and, the sooner Canada realizes it, the better.

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[Professor Craven's views are more fully set out in "Of Federalism, Secession, Canada and Québec" forthcoming in the *Dalhousie Law Journal*. His book on succession in Australia is *Succession: The Ultimate States Right* (Carlton, Victoria: University of Melbourne Press, 1986)].

CANADA AFTER MEECH

Bruce P. Elman

and

A. Anne McLellan

INTRODUCTION

This comment is divided into two parts. First, we will review the events surrounding the formulation and subsequent demise of the Meech Lake Accord. Second, we will try to identify, and comment upon, some of the effects of the failure to reach agreement on the principles contained in the Accord.

THE PROCESS

April 17, 1982, was an extraordinarily important date in Canadian history. On that day, Canada's quest for sovereignty from Great Britain was realized. By affixing her signature to the *Canada Act, 1982*, Queen Elizabeth patriated the *Canadian Constitution*, making Canadians solely responsible for any future changes in their constitutional regime. At the same time, the very nature of Canada was

changed from a country ruled by the principle of parliamentary sovereignty to one governed by the rule of constitutional supremacy.

Long sought-after constitutional reform had been achieved. In spite of the blustery weather conditions, there were smiles all around. Only one factor cast a damper on this moment. Québec was not a signatory to the constitutional agreement. Québec had, through its referendum on sovereignty provided the impetus for reform. And yet, while celebrations were going on in Ottawa, Québec was preparing to exercise its legal right to opt-out of significant parts of the Constitution.

A constitutional impasse ensued. Eventually new governments came to power in both Québec City and Ottawa. These governments, headed by Robert Bourassa and Brian Mulroney, wanted a deal that would end Québec's