LEARNING FROM FAILURE: LESSONS FROM CHARLOTTETOWN

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INTRODUCTION

The defeat of the Charlottetown Accord in the October 26th referendum has raised once again the issue of whether Canada is governable as a nation. Two questions are central to this debate. Does the rejection of the Accord represent a profound disenchantment among the public with the political leadership and decision-making elite in Canada? Is the demand for greater participation in the constitutional reform process inconsistent with good or effective government?

To answer these questions, this commentary is divided into three sections. The first provides a context for analysis of the failure of the Charlottetown Accord by noting the ways in which Canadian political leaders attempted to revise the 1990-92 constitutional process to satisfy criticisms of the Meech Lake process. The second offers an assessment of the 1990-92 round of constitutional negotiations. The third speculates on the lessons taught by Charlottetown. The writer cautiously concludes that Canada is not ungovernable but warns that the lessons from Charlottetown must be taken seriously and simplistic accounts of the Accord's failure justifying political complacency must be rejected or Canada may indeed become ungovernable.

RESPONDING TO MEECH LAKE

Four criticisms of the Meech Lake constitutional reform process were widely accepted.[1] First, the process was viewed as constituting an attempt by governments to further their agendas at the expense of the citizenry. It was criticised as being exclusive and unrepresentative of the societal interests of women, Aboriginal organisations, various ethnic and racial communities, and the disabled, among others. The outcry raised sufficient doubts about the process to require future bouts of constitutional reform to extend beyond the practice of executive federalism and to be more reflective of the diversity within Canadian society. Second, the lack of public information on the negotiations and the absence of justificatory papers heightened suspicion of the Accord and spawned the demand for a more open process in future. Third, the widely held view in central Canada that Québec had been slighted in this round (especially by Manitoba, Newfoundland and the Aboriginal peoples), as in 1982, required attention to its concerns. Fourth, leadership during Meech Lake was criticised as arrogant, pusillanimous, weak and self-interested. The need to reconceptualise the role of political leaders in the constitutional policy process was apparent.

The above four criticisms guided the Charlottetown process. The governments engaged in the most extensive round of public consultations on the constitution ever conducted in Canada. Québec began the process with the Allaire (Liberal Party) report and the Bélanger-Campeau Commission on the Political and Constitutional Future of Québec. The federal government responded with the Citizen's Forum on Canada's Future which alone consulted over 400,000 Canadians, and the Special Joint Committee of the Senate and House of Commons on the Process for Amending the Constitution of Canada which heard over 200 witnesses and received over 500 briefs. To review its constitutional proposals, the federal government established the Beaudoin-Dobbie Committee on the Renewal of Canada which heard over 700 individuals, received over 3,000 briefs, and culminated in a series of conferences involving ordinary Canadians and experts. The provinces and territories followed suit, to varying degrees of representativeness, with their own hearings processes and reports. By the end of this phase of constitutional reform, the governments had heard from a vast array of Canadians, read thousands of pages of briefs, and collected numerous hours of testimony. The process was open and inclusive.

The second phase of the Charlottetown process was also different from Meech Lake despite the fact that negotiations again were conducted in private. Officials appeared to proceed more deliberately and openly. To the public, not privy to the pre-Meech negotiations, the Meech Lake Accord appeared to be devised in two sessions, at Meech Lake and the Langevin building, while the Charlottetown Accord resulted from extensive talks between March 12 and August 28, 1992. The public was also kept abreast of developments in the talks through press releases.

The Charlottetown talks appeared more inclusive and representative. Negotiators included the federal government, nine provincial governments, the governments of the Northwest Territories and Yukon, and four of the major national Aboriginal organisations, the Assembly of First Nations (AFN), the Metis National Council (MNC), the Native Council of Canada (NCC), and the Inuit Committee on National Issues (ICNI). Québec chose to be absent until the latter stages but was kept informed throughout. Women's organisations were consulted during the process. Although the Native Women's Association of Canada (NWAC) was not formally represented, the AFN and the NCC made provisions for the representation of women within their delegations.

The third stage of the Charlottetown process was drastically different from Meech Lake. The governments included the public in the ratification stage through a non-binding referendum for a number of reasons. To the negotiators, the agreement appeared representative of the public's concerns expressed in the hearings and rejection of it seemed inconceivable. The referendum substituted a less potentially divisive vote on the constitutional proposals for the vote on sovereignty scheduled for no later than October by

Bill 150 of the Québec National Assembly.[2] It also served as a substitute for public hearings in Manitoba,[3] and for referenda required by provincial legislation in Alberta and British Columbia. Further, the requirement of a national referendum subjected all jurisdictions to the same standards of public scrutiny thus preventing some provinces from privileging their positions in the negotiations.

Perhaps above all the governments were attempting to address the problem of political legitimacy. A federal government with poor standing in the public opinion polls could not command the requisite authority to go forward with wholesale constitutional reform. Public ratification deflected charges of elitism and illustrated the confidence of the leaders in the deal.

In sum, a brief comparison of the Meech Lake and Charlottetown processes indicates that the political leaders had responded creatively to public criticism. The Charlottetown process was more open, inclusive, representative, and deliberate. An attempt was made to reconcile the demand for greater participation with the need for strong leadership, and to find a compromise among the interests of societal groups, the various governments, and Québec.

AN ASSESSMENT OF THE CHARLOTTETOWN PROCESS

Although the Charlottetown Accord was defeated in the referendum, to assert that the process was a failure would be misleading. Careful analysis of the process reveals that it constituted an improvement over the Meech Lake process but was still deficient in some key respects.

The first two stages of the process were clearly better, if not perfect. As shown above, Charlottetown met the demands articulated during Meech for a more open, inclusive and representative process. Public consultations conducted across Canada were extensive. The reports of the various constitutional commissions seemed to reflect public opinion on constitutional issues within their jurisdictions. The only serious fault in the first stage of the process was that the sheer number of committees and their various mandates and objectives caused a seeming lack of direction in the public consultations, and engendered a sense of constitutional fatigue among the Canadian public. Thus it was not surprising that the Beaudoin-Dobbie Committee hearings ground to a halt in Manitoba or that it faced the resignation of Senator Castonguay early in its mandate. As a result of this flaw in the process, the more fundamental concern of ordinary Canadians with economic issues, expressed during the constitutional hearings and conferences, was obscured.

Similarly, the negotiations phase of the Charlottetown process constituted an improvement over Meech Lake by meeting the criteria of being more open and inclusive, but it harboured two deficiencies. The closed door negotiations rendered the process vulnerable to accusations that the elites at the table were attempting to redirect the reforms to favour their interests despite the comprehensiveness of the final package. This raised public suspicion of the process. Further, the absence of Québec in the early part of the negotiations process weakened its bargaining position. By the time it entered the talks, many accommodations had been made between the various actors which affected its ability to achieve its initial demands. The Québec delegation was placed in the position of conceding to many of the gains already won by the other delegations.[4] Thus, the final package was easily subjected to criticism in Québec when it was compared with that province's constitutional reports.

Despite these weaknesses in the two phases, this part of the process met the criteria set down during Meech and made significant progress in meeting people's expectations. The critical reasons for the failure of the Charlottetown Accord cannot be located there. It was during the ratification phase that the real problems with the process surfaced. These problems may be divided into two categories: the content of the deal and the referendum campaign.

First, the content of the package illuminated a serious flaw in the process. It had failed to reconcile the demand for greater public participation with the requirement of effective leadership. The proposed reforms were more broadly representative of societal interests than the Meech Lake proposals but, like that set of reforms, they failed to provide a coherent vision of Canada. For example, the Charlottetown "Canada Clause" was more inclusive of various societal interests than the Meech Lake "Distinct Society" clause but neither clause offered a cohesive statement of Canadian identity. More extensive enumeration of fundamental characteristics still seemed to exclude some groups and to divide Canadians.[5] Similarly, although the package contained provisions on Senate reform for the west, the division of powers for Québec and self-government for Aboriginal peoples, it failed to integrate these diverse elements into a coherent plan for the development of Canada as a nation.

In sum, while the Charlottetown Accord delivered on specific demands, it failed to provide direction to the reforms. Given that a major objective of a constitution is to serve as a statement of a nation's identity and fundamental values, this was a significant weakness. In the effort to accommodate various societal interests, two hallmarks of effective political leadership, vision and direction, were sacrificed.

Second, the conduct of the referendum campaign contributed to the defeat of the Charlottetown Accord.[6] The negotiators underestimated the strength and credibility of the potential sources of opposition to the deal. At the point of release of the Accord, public ratification seemed likely given that the main opponents of the Meech Lake Accord (namely Clyde Wells, Gary Filmon, and Ovide Mercredi) were among its supporters. Significant public opposition seemed unlikely. Contrary to these expectations, opposition was effectively mobilized by the Trudeau intervention and by the concerted efforts of individuals such as Judy Rebick, Deborah Coyne, Sharon Carstairs, Mary Eberts, and Mary Staniscia, and by organisations such as the National Action Committee on the Status of Women (NAC) and NWAC. Among the most convincing arguments put forward by these women were those relating to economic and social concerns raised by citizens during the hearings. They contended that the deal was insensitive to the immediate worries of Canadians during a recession such as the state of the economy,

childcare, child welfare and income support. This line of argument was rendered more powerful by linking these faults to the lack of vision demonstrated in the Accord and by portraying it as a trade-off between various elite interests.

The release of information to the public also was flawed. The slow mobilisation of the Yes side allowed the No side to have the first word and thus to define the terms of debate. While this delay was inevitable given the extensive consultation process embarked on by the Yes coalition, it put their campaign at a disadvantage. Further, the late release of explanatory material, and the release of the legal text on October 9 only after substantial public demand, allowed time for suspicion to be planted in the public mind that the text harboured secret deals.

The nature of the information released to the public was also questionable. Members of the public complained that, once released, the draft agreement and the legal text were complex and too convoluted to be understood by the average citizen. Similarly, the explanatory material released by the government was criticised as being confusing and without historical context.[7] Lack of comprehension fuels anger and impatience, so the poor reception given an agreement which appeared abstruse and obscure was understandable.

The suspicion of elites and disillusionment with political leaders now prevalent in western liberal democracies also influenced public opinion of the deal. The Yes campaign was vulnerable to criticism because of the elite and moneyed interests behind it. Attempts by political leaders to accommodate criticisms of the agreement in the early phases of the campaign were regarded as opportunistic. For example, the changes made in August and early September in response to the NWAC decision and Aboriginal peoples' concerns with the self-government provisions were charged as being vain attempts to stave off a No vote rather than genuine gestures of goodwill.[8] Accusations of elite accommodation plagued the agreement from the negotiations phase throughout the campaign. The deal also was characterized as a desparate bid by the Mulroney government to hold power. Despite the efforts of the Yes campaign, these complaints could not be refuted decisively.

The strategy of the campaign was misdirected. Initially, the rhetoric of the Yes campaign and of the federal government in particular was at variance with public opinion. Citizens in provinces outside of Québec resented being told that a deal had to be reached or Québec would separate and the Canadian economy would be destabilized. As data was released indicating that the dollar was unlikely to plummet following a No vote and that opinion in favour of the sovereignty option was weakening within Québec, these selling tactics used by the Yes campaign became increasingly offensive to a large segment of the public.[9] The public residing outside of Québec also questioned the Yes side's argument that the deal was necessary to redress Québec's grievances. Giving special consideration to Québec's concerns was inconsistent with the claim also being made that this round of constitutional discussions was different from Meech Lake because it was intended to be a more inclusive Canada round. Finally, in the initial stages of the campaign the rhetoric used by the Yes side was aimed at Canadians' feelings of national pride and patriotism. It was intended to give Canadians the "warm fuzzies" so to speak instead of being a rational discourse on the details of the deal. Polls had indicated that this was the best strategy for selling the deal.[10] However, this kind of rhetoric was out of step with the public mood and its desire for hard information. It underestimated the interest of the public in seeing the deal defended on the specifics as well as the whole.

A major selling tactic was the claim that, by embracing the Accord, Canadians could feel that they were "doing the right thing." For example, by accepting Aboriginal self-government, non-Aboriginal Canadians could redress the wrongs of the past; by accepting a revised Senate, central Canadians could respond to western feelings of alienation; by accepting revisions to the division of powers and the distinct society clause, non-Québeckers could remedy past oversights. As Shelby Steele has argued, if a majority or privileged population is made to feel guilty for its treatment of a disadvantaged group, then it will feel reassured about itself when it acts to correct that wrong.[11] Thus when the support within the target communities began to break down, the sponsoring community felt betrayed; it had done the right thing and these groups were not responding with the appropriate measure of gratitude. Resentment mounted among the citizens initially inclined to say Yes as criticism of the agreement emerged from various interests (NWAC, Mohawks, Treaty Chiefs, Manitoba Chiefs) within the Aboriginal community over the self-government provisions, as the public became privy to the reaction of Bourassa's advisors to his stance, and as the B.C. public attitude to the Accord, especially to Harcourt's concession regarding Parliamentary representation, shifted. Canadians could not help but feel confused and angry since they believed that they had responded in good faith to the needs of these communities.

The reasons for the failure of the Accord are multitudinous. The above represent only a few of the problems in the process. While it is important to note weaknesses and failings in the process, it should not be overlooked that the process constituted a significant improvement over Meech Lake. The political leaders seemed to make a genuine and concerted effort to achieve constitutional reforms which, in their opinions, were necessary and desirable. Some problems in the process were inevitable and irremediable as well as unforeseeable. However, others can be attributed to the failure of the leaders to understand the extent of change entailed by a demand for greater public involvement in the process of constitutional reform.

THE LESSONS

Despite the failure of the Charlottetown Accord on October 26, it should not be concluded that Canada is ungovernable as a nation or that the demand for greater participation in constitutional reform is inconsistent with good or efficient government. Rather, the improvements in the process reveal some ways in which this demand may be accommodated. The weaknesses or reasons for failure point to important considerations which must be taken into account to develop a future model for macro-constitutional change. The lessons are both positive and negative.

First, in future any rounds of macro-constitutional change must necessarily be inclusive and open. A new threshold for public participation and influence has been set. It will not be possible to lower this expectation. Interest groups can be expected to lobby to maintain if not expand their influence. Groups not included in the Charlottetown process may be inclined to argue for formal inclusion in macro-constitutional reforms. For example, NWAC is unlikely to relinquish its request to be represented alongside the other national Aboriginal organisations in future talks. The mechanisms for constitutional change have been altered. Public hearings are the basic minimum requirement for a more open and inclusive process. As Meech Lake and Charlottetown revealed, this is a positive outlet for public grievances and the expression of opinions. Commission reports must be sensitive to these opinions if they are to gain credibility among the public. Similarly, negotiations must be conducted with these opinions in mind. Where departures occur, they must be defended in concrete terms. The referendum is also a fact of constitutional reform in Canada now. The precedent has been set. While a referendum would not be necessary for housekeeping amendments, amendments affecting citizen's rights will most likely require public ratification.

The second lesson to be drawn from this experience is perhaps the most important. The roles and responsibilities of the political leaders must be significantly altered. At the conclusion of Meech Lake, I analysed the demand for greater participation and, using Robert Reich's *Power of Public Ideas*, concluded that it would not be sufficient merely to tabulate preferences and construct a deal on that basis.[12] Effective political leadership in this period of public participation involves three equally important steps. First, public concerns must be identified and ranked in terms of their importance and intensity of support. This can be accomplished through the public hearings and Committee report stage. Second, the leaders should negotiate a package of amendments based on the committee positions and the general interests of the Canadian community. Third, they must be prepared to defend their proposals before the public. This means that the deal cannot appear to be a self-interested bargain among elites. Instead it must embody a vision of Canada's future. Since the Constitution serves as a fundamental statement of the nation's identity, beliefs and principles, changes must honour and enhance this statement and be defendable as such. In other words, to achieve maximum acceptance, an amendment should embody a principle or objective Canadians embrace and should make political or economic sense to the average citizen. For example, Aboriginal self-government may be defended in lofty terms as necessary for the self-actualization of peoples long oppressed, and in practical terms as being cost-effective since it could be argued that it will institute a system of control and responsibility among local communities. If reforms are defended in this way, they will make Canadians feel good about themselves while seeming logical and acceptable. However, the explanations must be substantive and genuine; they cannot be platitudinous.

Charlottetown failed in this respect. While the leaders struck a deal that was responsive to specific demands articulated by the public during the hearings process, the Accord failed to provide a vision or coherence to the reforms. As a result, the No side could convincingly question whether it provided direction for the nation, or even answered its needs as it moves into the twenty-first century. Further, the debate over the Accord seemed remote from the daily concerns of the average Canadian and was incomprehensible on a practical level. No clear rationale was given explaining how the reforms would improve the lot of the average Canadian in daily life, or what it is to be a Canadian.

Hence, in the period of greater public participation, the roles and responsibilities of political leaders also change. Leaders must be responsive to public demands but willing to make independent decisions and then to defend those decisions before the public in terms that are meaningful to them. This is a much more challenging form of leadership than one which tabulates preferences and then defends them on that basis while abdicating responsibility for those decisions or the direction of reform.

The final lesson from Charlottetown to be noted here concerns the predisposition of Canadians to constitutional change. The Yes campaign observed throughout the referendum that Canada was ranked as the number one nation in which to live by the OECD. Canadians seem to accept this as a fact (despite the occasional glance of envy at the United States). However, instead of being an impetus to change, this may serve to reinforce the status quo until it becomes obvious how a change would improve the lot of Canadians, or how a lack of change would be detrimental to the well-being of Canadians. Any amendments intended to respond to the needs of specific groups or provinces within the Canadian community must strengthen the nation as a whole. Perhaps the *Economist* summed up this aspect of the Canadian mind-set when it observed that Canada is the only country that could have a popular revolution in favour of the status quo.

Charlottetown was not a futile exercise. Granted, the Accord failed. However, during the process some valuable lessons were learned, the most important of which are that the demand for greater participation is here to stay and that definitions of political leadership must be revised. Macro-constitutional reform is unlikely to occur again in the near future unless a threat is posed to the integrity of the Canadian community by some of the problems left unresolved with the failure of Charlottetown. However, the lessons should not be ignored or lightly dismissed. They are not just confined to the constitutional arena. If Canada is to be governable, then the lessons must be applied to other areas of political decision-making and leadership. They may provide an avenue to countering public disenchantment with public officials by strengthening a central tenet of our political system: representative and responsible government.

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AUTHOR'S NOTE:

An earlier version of this paper formed the basis of the remarks which I delivered at the Institute of Intergovernmental Relations, Annual General Meeting and Seminar on the Lessons of the Canada Round, Queen's University, Kingston, November 30, 1992.

1. For discussions of these criticisms of the constitutional process, see A. Cairns, *Disruptions: Constitutional Struggles, from the Charter to Meech Lake*, Douglas E. Williams, ed., (Toronto: McClelland and Stewart, 1991); D. E. Smith, P. MacKinnon, and J. C. Courtney, eds., *After Meech Lake: Lessons for the Future* (Saskatoon: Fifth House Publishers, 1991); R. Watts and D. M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991); Robert Young, ed., *Confederation in Crisis* (Toronto: Lorimer, 1991); Andrew Cohen, *A Deal Undone: The Making and Breaking of the Meech Lake Accord* (Vancouver and Toronto: Douglas and McIntyre, 1990); D. Coyne, *Roll of the Dice* (Toronto: Lorimer, 1992); P. J. Monahan, *Meech Lake: The Inside Story* (Toronto: University of Toronto Press, 1991).

2. Bill 150 was amended on September 1, 1992 to allow the substitution.

3. The rules of the Manitoba Legislative Assembly stipulate that public hearings must be held on constitutional amendment bills. This rule may be waived by a simple majority vote in the House if a two day notice of motion to waive the rule is given. If no notice is given, then unanimity is required.

4. Participants in the talks have confirmed this observation.

5. This line of thinking was prompted by numerous questions I received during the public forums on the Charlottetown Accord. Citizens did not disagree with the intent of the clause, they seemed to disagree with the privileging or recognition of specific groups and not others. This was also pointed out by organisations like NAC.

6. These comments are based on my interpretation of the public reaction as represented in media coverage of the referendum in September and October, 1992.

7. Again, this was a recurring point in the public forums. Many questions centred around the reasons for the inclusion of certain provisions in the agreement. When they were placed in a historical context, they seemed more reasonable.

8. These changes concerned the applicability of the Canadian *Charter of Rights and Freedoms* to Aboriginal governments.

9. *The [Toronto] Globe and Mail* (14 October 1992) A1-2; *The [Toronto] Globe and Mail* (22 October 1992) A1-2.

10. M. Adams, Address, ("The Constitution: Year of Decision" Conference, York University, Centre for Public Law and Public Policy, 24 September, 1992) [unpublished].

11. Shelby Steele, *The Content of Our Character* (New York: St. Martin's Press, 1990) at 10-12.

12. See "The Demand for Greater Participation" in R. Simeon and M. Janigan, eds., *Toolkits and Building Blocks: Constructing a New Canada* (Toronto: C.D. Howe Institute, 1991) at 71-74; and R. Reich, ed., *The Power of Public Ideas* (Cambridge, Mass.: Harvard University Press, 1990) at 1-12.