

## ENGLISH CANADA AND QUEBEC'S RENDEZVOUS WITH INDEPENDENCE

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*Drawing on his wide and distinguished experience in public life and in the law, Mr. Berger reflects on the choices facing English Canadians after the demise of the Meech Lake Accord. He calls for a new approach, characterized by respect and realism, to English Canada's relationship with Quebec. This article is the text of the Martland Lecture given at the Universities of Alberta, Calgary and Lethbridge in March 1991.*

*Thomas Berger puise dans sa vaste expérience du droit et de la vie publique pour examiner les options qui sont offertes aux Canadiens anglais après l'échec de l'accord du lac Meech. Il demande que les relations entre le Canada anglais et le Québec soient abordées sous un angle neuf, avec respect et réalisme. Le présent article est le texte de la conférence Martland, présentée aux Universités de l'Alberta, de Calgary et de Lethbridge en mars 1991.*

What should English Canada's response be as Quebec moves towards its rendezvous with independence? Since the death of Meech Lake, we have heard repeatedly that Quebec knows what it wants, that English Canada must get its act together and come up with a response to the proposals that Quebec is making for fundamental constitutional change.

The flaws in Meech need not be reiterated. What was to have been Quebec's round became the provinces' round. To obtain the provinces' agreement to Quebec's five points, the federal government agreed to enlarge the powers of all the provinces. The Meech Lake Accord gave Quebec — and all the provinces — more than they had at first sought. We are told that the Meech process was flawed, too, that what is needed is a new process. Of course the Meech process was flawed. The First Ministers did not use the amending procedure provided in the *Constitution Act*. The result was that amendments requiring the consent of only seven provinces could not be proclaimed because they had to be unanimous, and amendments which required unanimity but which were subject to no time limit had to be passed by June 23, 1990. By this means the First Ministers laced themselves, and the country, into a constitutional straitjacket.

Meech's death alarmed Canada's political establishment. We were told that Quebec would treat the rejection of Meech as a rejection of Quebec, and that this would mean the end of Canada as we know it. The defeat of Meech, it is said, has revived the dragon of Quebec nationalism. If only we had not rejected Meech, the cause of Quebec independence would have no following in Quebec today.

This just won't wash. We would have been in worse condition if Meech had passed. By rejecting Meech we preserved the Supreme Court as a national court and we made sure that Senate reform was not translated into nothing more than a Senate that is a repository for provincial instead of federal hacks and mediocrities. We thwarted a transfer of powers to the provinces that would have undermined federal programs and institutions. And the passage of Meech would not have accommodated Quebec nationalism, let alone the Quebec independence movement.

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If Quebec nationalism is on the rise, it is surely due to a widespread sense of linguistic and cultural solidarity, not a reaction to the rejection of Meech. Does anyone really believe that if Meech Lake had been adopted, Quebec nationalists would have been satisfied? That believers in independence would have been satisfied? Of course not. And why should they have been? Quebec nationalists believe that confederation must be fundamentally restructured if Quebec should remain in Canada. Of course, *independantistes* do not think Quebec should remain in Canada under any circumstances. If Mr. Parizeau wins the next election, he is going to hold a referendum. Would the passage of Meech Lake have made any difference? No. It might have spared us Mr. Bourassa's referendum, but not Mr. Parizeau's referendum.

Now the Prime Minister and the Canadian political establishment are telling us that we must respond to the Allaire Report and the Belanger-Campeau report; according to Keith Spicer, this is the purpose of his forum, to respond to proposals from Quebec, "no matter how radical" they may be. I disagree. It is time to take stock of what Canada means to English Canada (by that I mean Canadians outside Quebec) and not to rush into another round of constitutional talks. At any such talks, as at Meech Lake, there would be no one to speak for Canada, certainly not Mr. Mulroney. He is a deal maker, not a nation builder. The premiers speak for the provinces, not for Canada. All that will occur will be further concessions to the provinces, further undermining of Canadian federalism. Although this may send the premiers home happy, it will be catastrophic for Canada as we know it.

The idea of Canada is an idea that will keep us together even if Quebec should opt for independence. The Meech Lake debate revealed the strength of that idea. English Canadians had a greater commitment to that idea — a greater faith in that idea — than our leaders did. That is why Meech failed; not because of cranky opposition by the people of English Canada to the distinct society clause. They sensed — even if they did not understand the details — that Meech Lake was another chapter in the Mulroney government's dismantling of Canada's federal system. Traditional Canadian deference to our political establishment was absent during the Meech Lake debate. Although everyone from Brian Mulroney to Stephen Lewis urged us on, the people of English Canada rejected this creation of their political leaders. And we were right to do so.

Soon Mr. Mulroney will propose an even more drastic transfer of federal powers. But this will appease no one in Quebec. Not even the Conservatives will agree to transfer the multitude of federal powers claimed for Quebec in the Allaire Report. For *independantistes*, independence will always beckon, quite rightly. We Canadians believe in the self-determination of nations. It is too late to argue that Quebec is not a nation. If Quebecers decide that they want to be independent, to establish their own nation-state, that is for them to decide.

It is time we took Quebec's movement for independence seriously. Mr. Mulroney and others seek to establish an equivalence between Western alienation and the demands of Quebec. Each is said to be a form of regional discontent, curable by transferring federal power to the regions. But they are antithetical ideas. It is true that Western politicians ask for more powers. They always have and they always will. But the only proposition

they have advanced that has popular support across the West is Senate reform. And Senate reform is intended to give the West greater influence in the government of Canada, whereas independence is intended to put an end to Quebec's connection with the government of Canada. Western alienation is not an issue of the same order of magnitude as Quebec independence. To equate these stale cries for political aggrandizement to Quebec's call for national independence is to magnify the former and to trivialize the latter.

In fact, the departure of Quebec would by itself reform the Senate. The principal complaint of those seeking reform of the Senate is that it does not act as a counterweight to central Canada's dominance of the House of Commons. If Quebec leaves, central Canada, which now has 48 senators, would be reduced to Ontario's 24. Western Canada would have 24 senators, the Maritimes 24, and Newfoundland 6. The Northwest Territories and the Yukon would each have one. There would remain as well 6 of the 8 appointments made to pass the Goods and Services Tax. From there it is only a step to an elected Senate, for the principal opponent of an elected Senate is Quebec. With Quebec gone, the way would be open.

But westerners should not think that a reformed Senate would change Canadian life. Populations and markets are smaller in the western provinces than they are in the large, populous provinces of Ontario and Quebec, with their great metropolitan centres. That is why central Canada is the financial and commercial hub of the country. A reformed Senate would not change that. It has been the federal spending power, transfer payments, equalization payments, and regional development policies that have addressed the inequities produced by these economic tendencies. And these federal powers and programs must be preserved. Those who think that Senate reform can alter geography and demographics are bound to be disappointed.

Of course Quebec is a distinct society; it is puerile to suggest that each of the other provinces is a distinct society in the same sense in which Quebec used the term. Quebec's distinctiveness ought to be recognized in the Constitution. The Civil Code gives it a distinct legal system. The French language is predominant in Quebec. Quebec has its own pension plan. It collects its own income tax. It has a special arrangement with Ottawa regarding immigration. Premier Bourassa himself has said that Quebec's *de facto* distinctiveness should be recognized *de jure*. But does this recognition require a wholesale reconstruction of the Constitution? Does the ordinary Quebecer sleep uneasily because Mr. Bourassa has not centralized in Quebec City the laundry list of governmental powers in the Allaire Report? I don't believe it.

This brings me to sovereignty and independence. Here we are entitled to ask, once again, exactly what *does* Quebec want? Sovereignty-association is an attempt to have it both ways. What must be understood is that we are talking about independence. Sovereignty, if it is more than a slogan, must mean independence. Premier Bourassa has gone well beyond demands for shuffling bureaucratic control from Ottawa to Quebec City. Quebec Liberals want control over such a long list of powers that theirs is no longer a claim for expanded provincial powers, but a claim of a different order of magnitude; in

truth, it is a call for independence. For the proposals in the Allaire Report will never be accepted by English Canada.

Quebecers should now call their political establishment to account, just as we did in English Canada. In English Canada we have a healthy scepticism of our politicians. It may be that Quebecers regard their political leaders as charismatic figures, and their slogans as talismans of Quebec's destiny. But I doubt it. I think Quebecers want to know what independence is all about. For Quebec it must be a moment of truth, unobscured by soothing sounds from English Canada about accommodating Quebec in some absurdist confederal state.

Quebecers should now require their politicians to explain the meaning of the rhetoric that, with the complicity of the Prime Minister and the leaders of Canada's other national parties, pervaded discussion of Meech Lake. Quebec's political establishment must flesh out what independence means. Premier Bourassa has said that, whatever happens, Canada and Quebec must have a common currency, central bank, and customs union, and a common Parliament. Mr. Parizeau disagrees; he rejects a common Parliament. But he says an independent Quebec will continue to use the Canadian dollar as its unit of currency, that there must be a joint central bank and a customs union. At the end of the day every spokesman for independence, when pressed, wishes to retain the Canadian dollar, to have a joint central bank, and a customs union. On these fundamental economic questions, Mr. Parizeau fudges the true meaning of independence as much as Mr. Bourassa does.

We rejected Meech Lake because it impaired the powers of our central government. Why would we now go farther than Meech did? An independent Quebec would be truly independent. *But so would Canada.* Why would we agree that control of our central bank and our currency, of fiscal and monetary policy, should be shared with another country? An independent Quebec would have to choose: true independence, its own currency, and its own central bank. If it wished to retain the Canadian dollar as its unit of currency, it would have no control over its own fiscal and monetary policy, certainly less influence than it has now. This would be the shadow of sovereignty, not the substance. Yet this question, like so many others, has been avoided by *independantistes*.

Is Quebec's political establishment prepared to acknowledge that independence can only be achieved after protracted negotiations? Will they disclose to Quebecers that there can be no separation without tears? And will they tell them that independence means independence, not some confederal contraption devised by the same convocation of politicians and bureaucrats that came up with Meech Lake? Is independence simply a vehicle to enable Quebec's politicians to hold the same offices as they do now, but with more expansive titles? Or do they believe in true independence? If so, they should have the courage to say so. Or are Quebec's political leaders, and its political establishment, as empty-headed as English-speaking Canada's proved to be?

When East Germany decided to join West Germany, what was the *sine qua non* of union? A common currency. The same central bank. A customs union. But this is precisely what Quebec's leadership insists an independent Quebec must have, *after*

*independence.* I know, I know, the two Germanys had a common language, English-speaking Canada and Quebec do not. But this reveals the true issue: how to protect the French language.

Quebecers will no doubt think hard about any scheme hatched by their political establishment. Parades and demonstrations are all very well, but what, in terms of new political and economic arrangements, does independence mean? Where lies the true expression of linguistic and cultural solidarity? Does Quebec really want to be a nation-state, an independent country in a continent dominated by the U.S. monolith? What chance would Quebec have as a French-speaking redoubt, more and more inward-looking? Given the present birth rate of French-speaking Quebecers, an independent Quebec would have to be a fortress Quebec, with ever more stringent restrictions on the use of English. If Quebecers get a good look at independence, they may well re-examine the Canadian option, for the survival of their language and culture is better assured within Canada than without.

An independent Quebec would be leaving behind the sizeable French-speaking populations of Acadia and eastern Ontario. And what of the minorities within Quebec? Even if Quebec were to achieve independence, she would at once be faced with the very questions that now confront Canadians: the presence of a great linguistic minority with a right to be considered a founding people, the claims of the aboriginal peoples, and the place in the new state of a multitude of ethnic and racial minorities.

Quebec must sooner or later have its rendezvous with independence. And it is a mark of respect for that right of choice to permit it to be made without English Canadians wringing their hands over the fact that the choice is being considered. There is no need for us to be fussing over them, coming up with half-baked constitutional proposals designed to postpone that moment of choice. And it is wrong for the Prime Minister or any of our leaders to offer to build constitutional halfway houses in which English Canada, if it is to survive, with or without Quebec, cannot agree to take up residence. English Canada must take independence seriously, but so must Quebecers.

Suppose Quebec opts for independence. By that I mean true independence. For Quebecers and Canada's political leaders must understand that English Canadians will not countenance the dismantling of the federal institutions and programs that we have built over the past century. Of course the departure of Quebec will be an enormous loss. But the idea of two peoples, two linguistic communities will survive: the Acadians and the French-speaking population of Ontario, together with other French-language minorities, will have a claim on Canada's traditions of bilingualism. The Constitution and the *Charter of Rights and Freedoms* will still be there to protect them. The idiotic idea that the *Charter* enshrines English Canada's individualist notions of our polity but not collectivities, and that Quebec rejects the *Charter* on that ground, could only occur to anyone who has never read the *Charter*. It protects both, and not only by express acknowledgment of the rights of linguistic minorities, aboriginal and treaty rights, and our multicultural heritage. In fact, it was the notwithstanding clause of the *Charter* that allowed Mr. Bourassa to enact his sign law despite the ruling of the Supreme Court that it was unconstitutional.

With Quebec gone, will Canada be a Pakistan of North America, with the Maritimes inevitably breaking away, as Bangladesh did from Pakistan? Such comparisons are trivial. A better one would be the United States, which is a Pakistan of North America: it has forty-eight contiguous states and Alaska, with Canada's land mass in between (not to mention Hawaii). Alaska shows no sign of leaving the Union because of its distance from the lower forty-eight. I lived in Alaska for two years in the mid-1980s. Alaskans, like Canadians, believe they have good reasons to remain where and as they are.

For, in the midst of the despondency that afflicts our political establishment, let me bring you the good news about Canada. Look around the world. Is there another country where you would prefer to live? Haven't we, here in the snow and scenery, built a nation-state worth preserving? We in Canada believe in a public sector that helps to knit the country together through transportation and communications, linking the vast spaces of the country. We have our network of social programs, the centrepiece of which is medicare. We have our national institutions, such as the CBC, designed to keep our country together. These are not just artifacts. Behind each there is an idea, the idea that there must be a government of all Canadians and federal institutions to serve all Canadians. We have avoided the extremes of wealth and poverty that disfigure U.S. society. We believe in government intervention to assuage the condition of the weak and to ensure Canadians everywhere a decent standard of living. We have even provided for it in the Constitution. Under the *Constitution Act, 1982* Parliament and the provinces are committed to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparity in opportunities, and providing essential public services of reasonable quality to all Canadians.

We are the kinder, gentler nation that George Bush spoke of in 1988. "Peace, order and good government" is a phrase of which we should not be ashamed. It has spared us the lawlessness that is the hallmark of life in the United States. In our own time Canada has become a haven for people from all over the world; we have the highest proportion of refugees per capita of any country in the world.

It is said that this is not enough, that there must be an overarching national ideal, arising from a stirring encounter in our history. But this is exactly what we do not have. And we are better off without it. We have been able to do without mindless patriotism. We are not ruled by any triumphant ideology. We could be the nation-state of the 21st century, in which the citizen's own identity does not have to be authenticated by a spurious nationalism.

Many of these features of our national life would have been altered by Meech Lake, and they are still at risk. But more than this is in jeopardy. A deal cobbled together to keep Quebec in will undermine our federal institutions, threaten the capacity of the federal government to protect minorities, and certainly make it impossible to settle outstanding questions of aboriginal land claims and aboriginal self-government. We cannot throw everything we have built over the side simply to keep Quebec on board.

I suppose it will be said that I am anti-Quebec. I am not anti-Quebec or indifferent to Quebec's aims. I opposed the denial of Quebec's veto in 1981.<sup>1</sup> I favour continuation of Quebec's special status. I am in favour of Quebec's right to independence. I think that an independent Quebec would be entitled to insist upon its present boundaries. But I want to ensure that, whatever happens, the principles of Canadian federalism remain intact.

If Quebec votes against independence in a referendum, where would that leave Quebecers? Well, they would still enjoy special status. Pierre Trudeau rejected the idea of special status for Quebec. But Quebec has rightly had special status since 1774. To pretend that Quebec is juristically a province like the others is a barren notion, putting constitutional form ahead of historical substance. Mr. Mulroney believes not in special status for Quebec, but in special status for all the provinces — a decentralized idea of Canada not shared outside Quebec. This is what led to the constitutional debacle of June 1990.

I want to see Canada survive, with Quebec. Staying together is important not only to ourselves. If people of differing languages, cultures, races, and religions can live together harmoniously within a great federal state, perhaps they may learn to live together harmoniously in the wider world. In Canada we have democratic institutions, the rule of law, an educated populace. If we can't find a way to live together, what peoples, what nations can? Quebec, like English Canada, has a stake in the survival of these ideas in the world.

I think the people of our country, including Quebec, will decide that the Canadian adventure should not be ended. There should be special status for Quebec, but not a constitution turned inside out simply to keep Quebec in. And as Quebecers make their choice — independence or no — they should not think that they can turn away from Canada and yet remain within it. There is no foregone conclusion to our constitutional journey. Quebecers have the right to choose; I hope that they choose Canada, but whether they do or not, we want to preserve the idea of Canada and the institutions that have brought us this far.

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<sup>1</sup>. In an article I wrote for the *Globe and Mail* in November 1981, I urged the restoration of aboriginal and treaty rights to the draft Constitution to be submitted to Westminster. This act of *lèse-majesté* led to my departure from the bench. In the same article I also urged the restoration of Quebec's veto.