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Quebec and Canada: National Problems; Institutional Solutions

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One of the great students of Canadian politics, the late Frank Underhill, once wrote an essay reproaching academics for too easily adopting a negative and pessimistic view of whatever issue they were considering. They should, he said, get out and talk to ordinary people. This would put them back in touch with the basic principles and revive in politics as a practical process rather than a subject for extensive theoretical analysis. With Underhill's advice in mind I have spent the last few weeks travelling throughout the Soviet Union, mostly by train, from the historic streets of Leningrad to the bustling Ubiquistan markets of Tashkent and Samarkand to the plains and forest of Siberia and to the beautiful Lake Baikal region and now to the Ukraine. Aside from giving me a glimpse of the vastness of the land and the diversity of the people the experience, as suggested by Underhill, has allayed many of the pessimistic impressions about the political situation in the Soviet Union. This is not a country or an economy on the verge of collapse. There are problems of course and the process for solving them is not always what we are familiar with in America. But the longer I visit here the greater the impression that they can and will be solved. Let me give you a very small and admittedly unscientific example but one which I think Frank Underhill would approve.

This occurred toward the end of a tortuous 12 hour trip in a jam packed bus over narrow roads en route to an isolated lake in the Altay mountain Region of Siberia. Suddenly the road gave way and the bus sank up to its axles in a patch of thick Siberian mud. As the driver tried in vain to rock the bus out all the able bodied men (many of whom had been standing for hours) got out and gathered in small groups around the bus. They proceeded to discuss in half a dozen languages what should be done. Three more or less equal groups emerged. One wanted everyone to get behind the bus and push it forward through the mud and back onto the road. Another group argued that it would be much easier to push the bus backwards out of the mud and then find an alternative path around the mud. The third group suggested that since it was raining we should wait for one of the army trucks that passed periodically and ask it to pull us out of the mud and escort us to our destination. The discussion continued for some time until the driver finally stopped his solo efforts to save the situation. After listening to the various suggestions offered he asked for volunteers to push the bus forward. The advocates of this plan quickly began pushing, to little avail. For a brief moment we wondered if stubborn pride was going to prevail over common sense and a co-ordinated effort. In less time than it took to ask the question the other two groups also put their shoulders to the wheel and this combined force managed to get us out of the mud and on our way.

I do not want to extend this metaphor too far but there is a saying that the Russians are slow to harness their horses but travel fast afterwards and think that is the situation here. In Canada, by contrast, we harnessed the horses a long time ago and we do not seem to have travelled very far or very fast insofar as relations between English and French are concerned. My paper deals with the recent past and possible future relationship between Quebec and the rest of Canada. I want to focus

first on the dimension most closely associated with the theme of this conference and that is the "National Question". In fact I want to suggest that our traditional understanding of the National Question has changed and we have today a new "National Question" that is the source of many of our problems.

National Questions New and Old

For more than two hundred years after the fall of New France in 1759 the National Question could be expressed as follows: Is it possible for a small group of 60,000 French Canadians (and their ancestors) to survive as a French Speaking society first under the rule of the greatest imperial power of the day and later as a small linguistic island in a predominantly English speaking North America? The answer in short is that by working within the existing political system, by producing astute political leaders and by co-operating with the political elites of English Canada French Canada survived and flourished. So the original Question that preoccupied generations of French Canadian intellectuals and politicians has been answered.

The new *National Question* relates to another traumatic event in Quebec history, the patriation and amendment of the constitution without the consent of the Quebec government in 1982. The new National Question is more difficult to formulate in a few words but essentially it is "How could you (English Canada) presume to change the constitution in 1982 without our consent and in a way that reduced the power of the Quebec National Assembly?"

This Question has permeated political debate in Quebec from the day the National Assembly unanimously passed a motion condemning the patriation of the constitution to the election of Robert Bourassa provincially and Brian Mulroney federally, to the Meech Lake Accord and its demise. The opening chapters of the Commission on the Political and Constitutional Future of Quebec is the most recent manifestation of this obsession.¹

The original National Question reflected Canada's attempt to deal with a universal phenomenon - the survival of minorities. The new National Question in effect seeks reparations for what was done, legally if unpleasantly, to Quebec in 1982. The original National Question was concerned with the fate of a people and it generated (with some exceptions) a sympathetic response both from political elites and the wider population in most parts of Canada.

The new National Question is dedicated to the proposition that Quebec is not a province like the others. While there is some sympathy for this view among English Canadians there is also considerable opposition not only from the general population but from the Premiers of other provinces who demand strict equality of the provinces. Confrontation over the ramifications of the new National Question has replaced co-operation and *bonne entente* over the implications of the old one.

Future Scenarios for Canada-Quebec relations

¹. See Report of the Commission on the Political and Constitutional Future of Quebec..... pp are devoted to

The worse case scenario, of course, would be adoption of a unilateral declaration of independence by Quebec. During the hearings of the Blanger-Campeau Commission on the Future of Quebec a number of specialists made the argument that for all intents and purposes Quebec already has the right to self determination . The Quebec legislature could declare the primacy of Quebec statutes and progressively take over areas of jurisdiction that are presently federal. The authority of the Supreme Court would be rejected and a new court of last resort created for the new state. The advocates of UDI reason quite rightly that English Canada would be loathe to use force to maintain the Union. They tend to forget, however, that force would not be required because of a little used federal power called disallowance which gives the national government the right to disallow any provincial law. UDI would bring about considerable pressure in English Canada for disallowance last used in 1937 when Alberta tried to set up its own banking system. Disallowance would change the nature of the debate from secession to the rule of law. The international community and particularly the United States would hesitate to recognize Quebec for fear of being accused of interference in internal Canadian matters. The legal and political spectacle of one jurisdiction representing the minority passing laws and another jurisdiction representing the majority disallowing them is not pleasant to contemplate and goes against all the common sense and patterns of political co-operation that has allowed Quebec to survive as a French society.

The second possible scenario, particularly in light of the Report on the Political and Constitutional Future of Quebec, would be a referendum on the question of sovereignty. Public opinion polls differ on the results of a referendum depending on the wording of the question but it is my view that given the political events of the last decade a straightforward question ("Are you in favour of sovereignty for Quebec.") would produce a positive answer. Could Quebecers vote no to such a question? It would be like renouncing two hundred years of collective survival as well as bad political judgement. Everyone knows that in Canada referenda are not legally binding. It does not take much political sense to understand that Quebec's bargaining position would be obliterated by a no vote and that a yes vote would not necessarily mean sovereignty.

The best case scenario would be a federal election before any referendum in Quebec. Most observers agree that such an election would result in a minority parliament with five parties of more or less equal strength - the three traditional ones plus the Reform Party and the Bloc Quebecois. Minority parliaments, if they are to survive, require compromise and negotiation.

Let me suggest two areas in which a minority parliament might foster the kind of reforms necessary to resolve present problem. The first is the issue of amending the constitution. The second relates to party discipline.

Amending the Constitution

Among the lessons drawn from the demise of the Meech Lake Accord one stands out. The constitution belongs to all the people and the First Minister must never again meet privately, as they did at Meech Lake, for the express purpose of amending it. They can and should continue to meet to discuss the economy, the environment or any other subject of mutual interest and of course many of their discussion should be *in camera*. But let us hope that in June 1990 we saw

the last of the full blow, quasi diplomatic, pretentious Constitutional Conferences of First Ministers that have been so unproductive for so many years.

The Prime Minister as well as other First Ministers claim to have understood this lesson. They have turned the constitutional debate over to a variety of parliamentary and non parliamentary commissions and sent them out to consult the people about future constitutional change. The results are not all in yet but I would suggest there is a developing consensus in English Canada on the desirability of a new mechanism to take constitutional amendment out of the hands of the First Ministers.

Quebec, Ontario, Alberta, New Brunswick and Manitoba are among the legislatures to establish legislative committees and no doubt others will follow. The federal government has set up both a Joint Senate-House Committee on the question of constitutional amendment and a non parliamentary forum on the larger constitutional issues.

The problem now, however, is that hearings are being conducted within the limited framework of the interests of each jurisdiction.¹ There is no opportunity for members of these committees to interact. Can a committee of one legislature, even the Parliament of Canada, reasonably be expected to come up with a new amending formula that is satisfactory to all other legislatures? In a federation, there needs to be a place at the national committee table for representatives of the entire Canadian legislative family. That includes those who are charged with legislating territorially, provincially, and federally. It may even include interests that are largely unrepresented in the various legislatures.

The current spate of constitutional hearings both televised and untelevised in no way constitutes a national debate. With six or eight unrelated sets of hearings, where do individuals and groups offer their views? How do members of legislatures gain access to the views of others from outside their jurisdiction without great effort and expense? How do we carry on focused constitutional debate while listening mainly to many single interest groups and individuals with personal axes to grind? Given the experience of the past few years we need an innovative vehicle to bring together parliamentary representatives from each provincial and territorial legislature and the Parliament of Canada.

This is hardly a new idea. Indeed during the parliamentary hearings over the Meech Lake Accord in 1987 some far sighted observers understood that the Meech process was doomed to failure and suggested a National Joint Committee on Constitutional Amendments for use in the future.² It would debate and hold hearings before the first Ministers conclude future agreements and could also be used to conduct national hearings prior to legislative ratification of any agreements. It would not be a decision making body but would have its own support resources making it independent of the governments.

In 1987 the federal parliamentary committee gave the idea a sympathetic hearing but declined to make any recommendations along these lines in its main report. In an Addendum to the report, however, the New Democratic Party did call for a "Standing Joint Committee of the Senate and House of Commons on Constitutional Reform which would hold hearings before as well as after First Ministers Conferences to facilitate the widest possible public participation in constitutional

renewal, and we would urge appropriate links with provincial legislative committees sharing a similar mandate." ³

The Committee of the Ontario Legislature Studying the Meech Lake Accord reacted somewhat more favourably to the idea. ⁴ Its final report "supports further investigation into the concept of a national committee on the constitution composed of members from the various jurisdictions". ⁵ Although no such investigation ever took place the idea has been revived during the spate of conferences organized following collapse of the Meech Lake Accord. Among the individuals to have proposed some variation of the idea are the president of the Canadian Political Science Association, a former advisor to Prime Ministers Pearson and Trudeau and a former Justice of the Supreme Court of Canada. Perhaps more important two Premier, Bob Rae of Ontario and Clyde Wells of Newfoundland have called for some kind of constituent assembly. Prime Minister Mulroney, the Government of Quebec and the Leader of the federal Liberal Party, Jean Chretien have generally rejected the idea? ⁶

The Objections

What are the objections to creating a National Constituent Assembly? For one thing Quebec has taken the position that it will never again negotiate constitutional change as one of ten equal partners and is only prepared to talk directly to the federal government. Several provinces, including Ontario, have said this is simply unacceptable.

Another problem is concern over the time required to organize such an assembly and the absence of a detailed plan as to exactly how such a body would operate. Quebec has suggested eighteen months as the maximum for serious re-examination of the constitution or it will proceed with a referendum on sovereignty. Opponents of the constituent assembly argue that it would be impossible for such an assembly to come up with a viable solution within that time frame. Such logic strains the credibility of the average observer. If there is a political will to resolve a problem, eighteen months is probably as much time as should be needed.

The absence of a credible blueprint or strategy outlining who would be represented, how they would be selected, when and where they would meet and various other organizational details is a more serious obstacle. Some proposals envisage an Assembly chosen by lot or some other half baked method not likely to be taken seriously by First Ministers. Others try to sidestep the question by saying each province should decide for itself. This implies that First Ministers, either individually or collectively, will decide the ground rules. Such creative thinking is well beyond the bounds of what the First Ministers have shown themselves to capable. So there is a dilemma -- to come up with a process that is acceptable to the First Ministers but is neither controlled or concocted by them.

The solution, as is often the case for what looks like a complex puzzle, is actually very simple. The way to establish a constituent assembly independent of the First Ministers but yet have their full support is to leave the organization of such a body to one group of individuals whose political legitimacy has actually been increasing in recent years -- the Speakers of the federal, provincial and territorial legislative assemblies.

Speakers are not elected for their constitutional expertise but for their ability to preside fairly over political debate and ensure integrity and respect for the rules. Let us ask the twelve provincial and territorial Speakers to meet with the Speaker of the House of Commons, not to discuss any substantive constitutional change but to consider the feasibility and organization of a constituent assembly. They would of course consult with their Prime Ministers prior to meeting but they would also consult with the leaders of other parties in their legislatures. When they did meet they would deliberate as individuals not as representatives of their parties or governments.

Assuming we have found a credible group to formulate the constituent assembly what about the involvement of Quebec. At the organizational meeting Quebec would be only one out of thirteen but since this is not a substantive discussion of constitutional issues there is no reason to think Quebec would boycott. More likely the Quebec Speaker would argue for a two nations format for the assembly. While there might be some support for this idea Quebec would probably wind up with somewhere between 25% and 35% of the places. This would be less than a 1:1 ratio but more than the 1 out of 11 relationship at First Ministers Conferences.

We would then have the elements of a compromise. To participate Quebec would have to mollify its obsession with winning reparations for what happened in 1982. Smaller provinces would have to accept an asymmetrical element in the amending process and, most importantly, the First Ministers would have to agree to merely transmit the conclusions of this body to their respective legislatures for a vote in keeping with the provisions of the existing amendment process. (This would not be unlike the old process whereby amendments worked out in Canada were forwarded to Britain for formal enactment).

There are many reasons why such a meeting will never take place but the most important reason it will never get any serious consideration is the numbing effect of party discipline on the Canadian political process. So powerful is our attachment to party discipline that many ordinary legislators are probably not enthusiastic about a constituent assembly. They have come to believe "if our leaders cannot solve these constitutional issues how can we, mere legislators, be expected to do so?" Both leaders and followers are comforted in their short sightedness by scholars who argue that party discipline and executive dominance are indispensable to the parliamentary process.

Our accountable and responsible government is held up as a shining example compared to the anarchy that prevails south of the border. There is some virtue in a well discipline party system when it comes to the consideration of ordinary legislation. But are constitutional amendments just another part of the routine legislative process to which the same rules and conventions are applied? Or if we really believe that the constitution belongs to all the people does it not therefore require a completely different process and attitudes completely different from the discipline that pervades the regular parliamentary process?

Notes

1. Only the Quebec Committee provided for members from other jurisdictions. Three federal MPs joined nineteen members of the National Assembly and fourteen non-parliamentary representatives on the Committee.
2. Canada, Parliament, Special Joint Committee of the Senate and House of Commons on the 1987 Constitutional Amendment, *Minutes of Proceedings and Evidence*, August 6, 1987, pp. 4-20.
3. Canada, Parliament, Standing Joint Committee of the Senate and House of Commons on the 1987 Constitutional Amendment, *Report*, Ottawa, September 9, 1987 (Addendum "B").
4. Ontario, Select Committee on Constitutional Reform, *Hansard Reports of Proceedings*, March 23, 1988, pp. 835-842.
5. Ontario, Select Committee on Constitutional Reform, *Report on the Constitutional Amendment*, 1987, Toronto, June 1988, p. 48.
6. See articles by Peter Russell, *Toronto Star*; Tom Kent, *The Ottawa Citizen*, February 28, 1991; Willard Estey, *Toronto Star*, April 23, 1991.