

Searching for a National Unity Peace, from Meech Lake to the Clarity Bill

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Abstract

For much of the last twenty years, political leaders and academics have assumed that the survival of Canada depends on constitutional reform, and never more so than in the wake of the 1995 Quebec referendum. This thesis updates the literature by explaining the remarkable story of the last several years: the achievement of a national unity peace in the absence of constitutional reform. The explanation centres on the post-referendum shift in federal strategy from constitutional reform to Plan B, a strategy based on the rules of secession that has its origins, it is argued, in the Reform Party's response to Mulroney-era constitutional reform. The thesis concludes that Plan B was a successful national unity strategy because it made secession seem risky and undesirable, but also because the strategy – unlike constitutional reform – was based on widespread national support and on the viability of the constitutional status quo.

Résumé

Depuis la plus grande partie des vingt dernières années, les politiciens et les universitaires supposent que la survie du Canada dépende de la réforme constitutionnelle, et jamais plus ainsi qu'à la suite du référendum de 1995 au Québec. Cette thèse met à jour la littérature en expliquant l'histoire remarquable des dernières années: l'accomplissement de la paix d'unité nationale sans réforme constitutionnelle. L'explication se concentre sur le changement de stratégie fédérale à la suite du référendum, d'une politique de réforme constitutionnelle à celle du plan B. Il s'agit d'une stratégie basée sur les règles de sécession qui a, avance-t-on, les origines dans la réponse du Parti réformiste à la réforme constitutionnelle à l'époque de Mulroney. La thèse conclut que le plan B a réussi parce qu'il avait fait croire justement que la sécession serait plein de risques et peu désirable, et également parce que la stratégie – contrairement à la réforme constitutionnelle – se basait sur l'appui national très répandu et sur la viabilité du statu quo constitutionnelle.

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Introduction:

Searching for a Constitutional and National Unity Peace

As Quebec premier Robert Bourassa embarked down the path of constitutional reform in the mid-1980s, he did it with an eye to the future: “What I wanted was a constitutional peace that would allow us to reach the year 2000, perhaps, in a climate of relative stability.”¹ This thesis is an examination of how, in a tangled, tumultuous way, Bourassa’s goal was met.

To Bourassa, of course, and to a great many others, constitutional peace meant a new constitutional arrangement in Canada; it meant Meech Lake, or later, Charlottetown. In the wake of the 1995 Quebec referendum, the search for constitutional peace was thought to require constitutional change even more dramatic; as Jeffrey Simpson wrote in the *Globe and Mail* the morning after the referendum, “Canadian federalism, to have any chance for survival, has no choice but to be radically changed in a short period of time.”² Indeed, such was the state of affairs by this time that many thought constitutional peace would only come with Quebec and the rest of Canada as separate sovereign nations. In the *Maclean’s* year-end poll for 1995, one in three Canadians, and one in two Quebecers, thought Canada as we’ve known it would cease to exist by decade’s end.³

What seems not to have received much consideration over these years was the possibility that constitutional peace could mean the constitutional status quo; the possibility, in other words, that the constitutional agreement reached in 1982 could represent a lasting settlement for Canadians. Even Jean Chrétien, a key architect of the 1982 agreement who had always defended its viability, determined late in the 1995 referendum campaign that if Canada were to survive, important constitutional changes

¹ Michel Vastel (Hubert Bauch, trans.), *Bourassa* (Toronto: Macmillan, 1991), 84.

² Jeffrey Simpson, “The life of battered Canadian federalism hangs by a thread,” *Globe and Mail* (31 October 1995).

were required. Yet even as Chrétien was making this decision, even as constitutional reform seemed more alive, more urgent, than ever, the very possibility of it was non-existent. The constitutional wrangling of the previous decade had much sure of this; the constant struggle for a new deal had so divided Canadians that no consensus on constitutional reform was possible. The situation, in fact, was quite the opposite of what Simpson suggested: if Canada were to survive, the last thing needed was another round of divisive constitutional negotiations; if Canada were to survive, it would have to be on the basis of the existing constitution.

Within months of his promise to reopen the constitution, Chrétien arrived at much the same conclusion. Having tried to reach a constitutional settlement designed to secure Quebec's long-term allegiance to Canada only to find resistance in the rest of the country, Chrétien accepted there was no deal to be had. Facing an ongoing separatist threat, however, he couldn't very well do nothing on the unity front. Chrétien, in fact, had already attempted a strategy of benign neglect in the lead-up to the 1995 referendum, and it had nearly resulted in disaster. The strategy he therefore decided on, together with Stéphane Dion, his new minister of intergovernmental affairs, was to secure the unity of Canada by challenging Quebec separatists over the rules of secession. Referred to as a Plan B unity agenda – as distinct from constitutional reform, or Plan A – the strategy set the federal government on a radical new course, and one that shortly produced impressive results. Against all prognostications, the new non-constitutional federal strategy allowed Canadians to reach the year 2000 in a climate of constitutional and national unity peace.

The purpose of this thesis is to explain why the federal government changed direction, and why it worked; to explain the failure of the Quebec constitutional agenda as a federal unity strategy during the 1980s and '90s, and its replacement in the years after the 1995 Quebec referendum with a new and successful strategy emphasizing the rules of secession.

³ Edward Greenspon and Anthony Wilson-Smith, *Double Vision: The Inside Story of the Liberals in Power* (Toronto: Doubleday Canada, 1996), 349.

Literature Review

This is a topic that has yet to be explored in any detail in the political science literature. Recent works on national unity – many written around the time of the Quebec referendum, though some more recently than that – have been based on an understanding of the national unity problem that has to be re-examined in light of new developments. That understanding was two-fold: that the national unity problem (i.e., the threat posed by Quebec separatism) required a new constitutional settlement between Quebec and the rest of Canada, and that such a settlement would be difficult to achieve. According to whether the first or second of these principles was emphasized in any particular work, the literature divides into two groups.⁴

The first group consists of works – from authors like McRoberts, Laforest, Cameron, Gagnon, and Gibbins – that presented the national unity problem as a constitutional problem (references to a continuing “constitutional crisis” are replete in the literature) requiring, naturally enough, constitutional solutions.⁵ As we’ll see through the course of this thesis, these solutions generally had as their basis the principles of the Meech Lake Accord – there was a particular emphasis on the need for a distinct society amendment – though some believed even more was required to achieve constitutional

⁴ Harvey Lazar’s essay, “Non-Constitutional Renewal,” provides an exception, as Lazar examines the Chrétien government’s attempts between 1993 and 1997 to achieve national unity by improving the federation through co-operation with the provinces across a range of policy fields. That said, even Lazar views Ottawa’s focus on non-constitutional renewal as a method of “buying time” before a new constitutional arrangement can be worked out: “At this juncture, therefore, the mundane conclusion to be drawn about the effects of the non-constitutional approach is that it was a necessary step for healing the wounds of the country. It has helped to create the preconditions for another effort at reconciliation” (pp. 28). And surprisingly, in a thirty-plus page essay on a non-constitutional unity strategy, Lazar devotes only two paragraphs to Plan B, and only then to comment that it has “detract[ed] from the non-constitutional approach” (pp. 28) by garnering excessive media coverage. See Lazar, “Non-Constitutional Renewal: Toward a New Equilibrium in the Federation,” in Lazar, ed., *Canada: The State of the Federation, 1997* (Montreal: McGill-Queen’s University Press, 1997), 3-35.

⁵ The views of these authors are discussed throughout this thesis; the relevant works are: Kenneth McRoberts, “In Search of Canada ‘Beyond Quebec’” in McRoberts, ed., *Beyond Quebec: Taking Stock of Canada* (Montreal: McGill-Queen’s University Press, 1995), 5-30; McRoberts, “After the Referendum: Canada with or without Quebec,” in *Beyond Quebec*, 403-32; McRoberts, “What do Canadians outside Quebec want?” *Globe and Mail* (31 October 1995); Guy Laforest (Paul Leduc Browne and Michelle Weinroth, trans.), *Trudeau and the End of a Canadian Dream* (Montreal: McGill-Queen’s University Press, 1995); Laforest, “The Need for Dialogue and How to Achieve It,” in Roger Gibbins and Laforest, eds., *Beyond the Impasse: Toward Reconciliation* (Montreal: Institute for Research on Public Policy, 1998), 413-28; Gibbins and Laforest, “Conclusion,” *Beyond the Impasse*, 431-5; Armand de Mestral and David Cameron, “Two words: Distinct society,” *Globe and Mail* (6 November 1995); Alain-G. Gagnon, “Quebec-Canada: Constitutional Developments, 1960-92” in Gagnon, ed., *Quebec: State and Society*, 2nd ed., 96-115; and Gibbins, “Getting There from Here,” *Beyond the Impasse*, 397-411.

peace. Gibbins, Laforest, and McRoberts, for instance, each proposed a loose association between Canada and Quebec, designed to substantially enhance the autonomy of Quebec without granting full independence.⁶ To be sure, authors producing works in this group acknowledged it would be difficult to achieve a new constitutional arrangement along the lines they believed necessary. One way or another, though, these authors foresaw change; it was either going to be constitutional change within Canada, or the secession of Quebec from Canada.

The second group of works was a logical extension of the first (and, in fact, some political scientists worked in both groups). Believing in the difficulty of achieving a workable relationship between Quebec and the rest of Canada, a number of scholars turned to the question of how the break-up of Canada might proceed.⁷ This academic focus on secession scenarios began following the collapse of the Meech Lake Accord in 1990 and peaked in the years surrounding the 1995 Quebec referendum.

In one sense, this second group of works hints at the post-referendum policy direction of the Chrétien government, insofar as Ottawa settled on a unity strategy that emphasized the procedures that were to govern Quebec secession. One work – Gordon Gibson’s *Plan B* – even spawned the term that has since been used to refer to policies, including those of the Chrétien government, related to the rules of secession. In terms of where the country was actually headed, though, the academic literature on secession failed (or has so far failed) to anticipate events. These works, even more so than those on constitutional renewal, contemplated change. But change hasn’t come.

That is the remarkable story of the last several years. Since the 1995 referendum, separatist support in Quebec has dropped to its lowest level since the mid-1980s, a decline substantial enough that in the last few years it has become possible to imagine a

⁶ See, for example, the chapters by Gibbins and Laforest in *Beyond the Impasse* or the two essays by McRoberts in *Beyond Quebec*.

⁷ Works in this area include: David Bercuson and Barry Cooper’s *Deconfederation: Canada without Quebec* (1991), William Gairdner’s *Constitutional Crack-up: Canada and the Coming Showdown with Quebec* (1994), Gordon Gibson’s *Plan B: The Future of the Rest of Canada* (1994), Robert Young’s *The Secession of Quebec and the Future of the Rest of Canada* (1995), Alan Freeman and Patrick Grady’s *Dividing the House: Planning for a Canada without Quebec* (1995), Stéphane Dion’s “The Dynamic of Secessions,” *Canadian Journal of Political Science* (Sept. 1995), and David Cameron, ed., *The Referendum Papers: Essays on Secession and National Unity* (1999). The last of these works is comprised of essays from a major study on secession scenarios undertaken by the C.D. Howe Institute following the 1995 referendum.

future in which Canadian unity seems secure. And all this in the absence of constitutional change.

It seems appropriate, therefore, that we attempt to account for these developments on national unity, which in the political science literature remain unexplained, and would even appear unlikely. This thesis is an effort in that regard. What, I ask, brought about the demise of constitutional reform – a solution long advanced by national politicians, Quebec politicians, and a great many political commentators – and why did the Chrétien government instead pursue a national unity strategy based on Plan B?

My Argument

As a response to the constitutional settlement reached by Prime Minister Trudeau and the nine premiers of English-Canada in 1982, the constitutional reform movement of the 1980s and '90s was driven by the effort to secure the Quebec government's assent to the Canadian constitution. As I discuss in Chapter 1, political and intellectual leaders within Quebec were particularly intent on remedying the 1982 agreement, which they considered an inadequate response to Quebec's traditional constitutional demands. In an effort to appeal to nationalist voters in the province, federal leaders also found it useful to promote the cause of constitutional reform, and they invariably did so by presenting constitutional reform as a national unity issue; to make amends for 1982 and stave off the separatist threat in Quebec, a new constitutional agreement was said to be required. As an actual national unity policy, however – as a policy that the nation could unite around – constitutional reform was a failure. It was a measure, in fact, of this failure that a significant portion of Canadians outside Quebec preferred to risk the break-up of Canada rather than accede to the constitutional changes envisioned by the Quebec government.

It was this opposition to constitutional reform, however, that allowed for the emergence of Plan B. Indeed, contrary to the conventional view that Plan B originated in the Chrétien government's response to the 1995 Quebec referendum, the movement actually has its origins, as I argue in Chapter 2, in the rejection of Mulroney-era constitutional reform.⁸ The key contributor to the development of Plan B was the Reform

⁸ For an example of the conventional view on the origins of Plan B, see Tom Kennedy, "The 'Clarity' Conflict," *CBC News* [Online] (February 2000). Available: <http://www.cbc.ca/news/indepth/clarity>. This report, nearly 3000 words in length, provides an explanation of Plan B from its origins to the Clarity Bill,

Party, which worked first to block the constitutional agenda of Quebec and then, understanding where that could lead, to define the rules of secession. This is to say, then, that Plan B emerged out of the consensus that national unity could well depend on constitutional reform; because Reform rejected the constitutional demands of Quebec, the party confronted the rules of secession. It wasn't until the experience of the 1995 referendum that Plan B emerged as a strategy for national unity, as federalists resolved to defend Canada by challenging separatists over the rules of secession. By early 1996, as Chrétien and Dion realized the ineffectiveness of Plan A and adopted Plan B, the transformation was complete: from its origins in the consensus equating national unity with constitutional reform, Plan B had become an alternative national unity strategy to constitutional reform.

From 1996 to 2000, Chrétien and Dion pursued this non-constitutional unity strategy through two major initiatives, as I discuss in Chapter 3. The first of these was the Supreme Court reference on Quebec secession, in which the Chrétien government asked the justices of the Court to determine whether Quebec possesses a legal right to unilateral secession. The second initiative was the Clarity Bill, legislation establishing federal rules on secession; passed by Parliament in June 2000, the Clarity Bill brought the Chrétien-Dion Plan B to its conclusion. It also brought widespread criticism, as federal and Quebec politicians – as they had at every stage in the development of Plan B – warned Chrétien and Dion that their unity policy was actually going to provoke a backlash in Quebec, and they implored the government to pursue more positive measures for national unity. In academia, there was also the view that Ottawa should seek positive reforms, as a number of scholars continued to push constitutional reform as a national unity solution. In spite of it all, however, the Plan B unity strategy worked. To a large extent this was because Ottawa was able to depict the separatist project as risky and undesirable, which was the intended goal. But there are two other reasons for Plan B's success. First, in contrast to constitutional reform, Plan B was a national unity strategy with widespread support in Canada; even in Quebec, despite the predictions of a backlash, Plan B attracted significant support, which made it a viable unity strategy for the federal government to

starting with the night of the 1995 referendum before moving quickly to the “beginnings” of the Plan B strategy – the Chrétien government's announcement in September 1996 of the Supreme Court reference on Quebec secession.

pursue. Second, despite the long-held view that national unity depends on constitutional reform, the constitutional settlement of 1982 is perfectly capable of forming the basis of a constitutional and national unity peace in Canada.

Chapter 1:

The Quebec Constitutional Agenda, from Meech Lake to Referendum '95

Introduction

The effort to bring the Canadian constitution under Canadian control – to patriate the highest law in the land from British authority – began with Mackenzie King in the 1920s. From the 1920s through the mid-1960s, in fact, every Canadian prime minister made a significant effort to bring the Canadian constitution home to Canada, and each failed. The failure, though, came not from British intransigence – the British government was more than willing to relinquish control – but from the inability of King and his successors to reach a deal with the provinces on how the Canadian constitution would be amended once it left British hands.

But even as the constitutional debate was deadlocked after four decades, the Pearson years saw the debate transformed. Having emerged as an issue of national sovereignty in the 1920s, constitutional reform became in the 1960s an issue of national unity, a central issue in the battle over the future of Quebec. By demanding new constitutional powers for Quebec against the threat of separation – “equality or independence” – it was the Quebec government of Daniel Johnson Sr., elected in 1966, that broadened the debate far beyond the amending formula and made constitutional reform an urgent issue in Canadian politics. The battle, though, was soon joined by the federal Liberal government and, in particular, Pierre Trudeau.

At the time of his arrival in Ottawa in 1965 as a member of the Pearson government, Trudeau was a constitutional conservative, skeptical of those who sought to reshape Canada through changes to the constitutional order.¹ In his *Memoirs*, Trudeau acknowledged his early opposition to constitutional change and explained his conversion:

¹ Michael Bliss, *Right Honourable Men* (Toronto: Harper Collins, 1994), 252-3.

My own view from the outset had been that attempting constitutional reform would open a can of worms, and I had urged Pearson in 1967 to keep the constitutional file closed. When Pearson told me, "The provinces are pushing and we have to respond," I said, "Let them push." But once he had made the decision that the federal government should make constitutional reform a priority, I was determined that the government of Canada should not simply react to provincial demands but should have an agenda of its own.²

The agenda Trudeau advanced, first as minister of justice under Pearson and then as prime minister, contrasted sharply with the constitutional vision advanced by Quebec governments of the 1960s and '70s: in place of Premier Johnson's vision of Quebec as the heartland of the French-Canadian nation, Trudeau advanced the vision of a bilingual Canada; in place of demands that Quebec receive broad constitutional powers, Trudeau defended the strength of the federal government while seeking simultaneously to limit the power of every government through a charter of rights; and in place of sovereignty-association or a two nations theory of Canada, Trudeau sought Quebec's full integration with the Canadian community, and spoke of One Canada. Yet for all this, we shouldn't miss the basic point of agreement: like his opponents, Trudeau had come to accept that the struggle over the future of Quebec was, as much as anything, a constitutional struggle.

The connection drawn by Trudeau between national unity and constitutional reform was displayed prominently during the 1980 Quebec referendum campaign. Six days before the vote, Trudeau delivered a major address that contained this pledge:

I know that I can make a most solemn commitment that following a No vote, we will immediately take action to renew the constitution and we will not stop until we have done that. And I make a solemn declaration to all Canadians in the other provinces: we, the Quebec MPs, are laying ourselves on the line because we are telling Quebecers to vote No and telling you in the other provinces that we will not agree to your interpreting a No vote as an indication that everything is fine and can remain as it was before. We want change and we are willing to lay our seats in the House on the line to have change.

In other words, the problems facing Quebec were constitutional problems, and by addressing this issue Trudeau was going to deliver a Canada that Quebecers could believe in. And to his mind he kept his end of the bargain: "I promised Quebec change, and I gave Quebec change. I gave Quebec, and all the rest of Canada, a new made-in-Canada

² Pierre Elliott Trudeau, *Memoirs* (Toronto: McClelland and Stewart, 1993), 228-9.

constitution with a new amending formula and a new charter of rights.”³ Indeed, Trudeau was able to deliver a constitution remarkably faithful to his national vision – a Canada comprised of equal provinces and equal rights-bearing citizens, with the strength of the central government intact, and with French- and English-minority language guarantees. It was the constitutional entrenchment of his vision for Canada, and the culmination of more than fifty years of constitutional bargaining by Canadian prime ministers.

But history, of course, is prologue, and the end of Trudeau’s constitutional work also marked a beginning – a beginning to the most intense decade of constitutional wrangling the country has ever known. For, as I describe in this chapter, the triumph of the Trudeau vision of Canada in 1982 and the defeat this represented for many in Quebec – with both the governing Péquistes and provincial Liberals opposing the patriation accord – meant that conditions were in place for a continuation of the constitutional struggle. Quebec nationalists, this is to say, provided a source of continued constitutional restlessness, and when the new Canadian prime minister tapped into this fount, the struggle resumed. But it wasn’t just a resumption of the constitutional struggle; it was a resumption also of the national unity struggle, for the two issues remained as one. National unity, that is to say, depended on constitutional reform.

But did it? With the perspective that distance from these events now permits, and particularly in light of the existence today of a national unity peace secured through non-constitutional means, I want to return to the Mulroney era in order to question the connection drawn in those years between national unity and constitutional reform. There were, of course, critics of Mulroney’s constitutional project even at the time – most prominently Pierre Trudeau, who fought all along the notion that patriation was an unacceptable settlement for national unity – but there was still a high degree of consensus that existed around the need for a new constitutional deal to secure Quebec’s allegiance to Canada. In fact, much of this chapter is dedicated to demonstrating the existence of this consensus, in national politics, in Quebec politics, and in the academic literature on national unity, right through to the 1995 Quebec referendum. Indeed, it was the experience of that referendum that led yet another Canadian prime minister, try though he did to have unity in the absence of constitutional change, to decide it couldn’t be done.

³ Ibid., 283.

Rejecting Patriation

It didn't take long for members of the political science community to weigh in against the constitutional deal of 1982. The most substantial expression of this opposition came in the 1983 work *And No One Cheered*, a collection of essays from seventeen scholars, including some of the most prominent names in Canadian political science. Though contributors to the volume found much to criticize in the 1982 deal, it was the treatment of Quebec during patriation that received the harshest criticism – criticism, according to the volume itself, that was widespread within the academic community of the province. The indictment of patriation offered in this collection is useful today not only as insight into the contemporary academic debate, but for providing the rationale behind a decade's worth of efforts to revisit the patriation accord.

In their introductory essay setting out the themes of the book, Banting and Simeon wrote that the “final settlement ... gave nothing to the Quebec view of Canada. The very way in which the decisions were made was the greatest blow, as the constitution was changed despite the passionate opposition of Quebec.”⁴ But the problem wasn't all process: “The substance of the accord also gives nothing to the Quebec view of this country. There was no decentralization of power; the Charter threatens important Quebec legislation, including its language law; with one minor exception, the new amending formula treats Quebec like any other province.”⁵

The argument, of course, was that Quebec shouldn't be treated like the other provinces; that Quebec's status as a “distinct society” should be recognized in the Canadian constitution.⁶ In fact, the argument is as old as the constitutional debate itself, at least as it emerged in the aftermath of the Quiet Revolution. As Banting and Simeon wrote, there is a

view that has been expressed in one form or another by every recent Quebec government, from Jean Lesage with his slogan *maîtres chez nous*, to Daniel Johnson with “equality or independence,” to René Lévesque with “sovereignty-association.” Quebec, this view says, is a distinct society or nation. Its national government, its primary political expression, the one

⁴ Keith Banting and Richard Simeon, “Federalism, Democracy and the Constitution,” in Banting and Simeon, eds., *And No One Cheered* (Toronto: Methuen Publications, 1983), 2-26, 12-3.

⁵ Ibid., 13.

⁶ Ibid., 11, 14.

political instrument that Quebecers alone control, is the government of Quebec. That is to be the tool to develop, protect and expand the society and culture. Furthermore, Canada itself should be understood as a partnership between two nations: relations between French- and English-Canada, therefore, are to be found in relations between Quebec and Ottawa.⁷

This theme was developed later in Latouche's essay examining the constitutional position of successive Quebec governments, from Lesage to Lévesque. "Quebec has always sought political equality with English Canada," he argued, "and the constitutional debate was a means of achieving that equality."⁸ That Trudeau and others were able to use this debate to establish an alternative constitutional vision was, in Latouche's view, tantamount to a "constitutional hijacking."⁹ Along the same lines, Bergeron denounced patriation as a "constitutional 'coup' on the part of the federal government," and Rémillard went so far as to contemplate whether the unjust imposition, as he saw it, of a new constitution on Quebecers warranted civil disobedience, though he ultimately rejected the idea.¹⁰

It was Rémillard's essay in particular that led Banting and Simeon to remark that a "profound sense of illegitimacy surrounds the [constitutional] outcome within the intellectual community of Quebec."¹¹ And to the extent the views of the province's intellectual and political communities were distinct – with Rémillard, the future constitutional affairs minister in the Bourassa cabinet, an obvious example of the overlap – the authors made it clear that provincial politicians were dead set against patriation, too: "no Quebec government could have supported" the deal.¹²

But in noting the existence of this political and intellectual consensus on patriation, we should also note its limits. This is to say that any attempt to broaden the consensus against patriation to include the general population of Quebec is deeply problematic, something contributors to *And No One Cheered* should have been clearer about. Indeed, when Banting and Simeon wrote that the "constitution was changed despite the passionate opposition of Quebec," or when Latouche wrote that "Quebec has

⁷ Ibid., 12.

⁸ Daniel Latouche, "The Constitutional Misfire of 1982," *And No One Cheered*, 96-118, 112.

⁹ Ibid., 97.

¹⁰ Gérard Bergeron, "Quebec in Isolation," *And No One Cheered*, 59-73, 60, 66; Gil Rémillard, "Legality, Legitimacy and the Supreme Court," *And No One Cheered*, 28-58, 55.

¹¹ Banting and Simeon, 13.

¹² Ibid., 13.

always sought political equality with English-Canada, and the constitutional debate was a means of achieving that equality,” they suggest that Quebec opinion on the constitution was essentially uniform *and* that the Quebec view was defined by the constitutional position of the Quebec government. Over the years, Trudeau himself was the first to point out the flaws in such reasoning: that his federal party was supported overwhelmingly in Quebec in five consecutive elections from 1968 to 1980 (during which time his constitutional views were well-known), thus giving him some claim on the province’s constitutional agenda; that federal MPs from Quebec were nearly unanimous in voting for patriation; that, indeed, to ignore these facts by focusing only on provincial actors is to deny the existence of federalism itself.¹³ In fact, as one might expect from a population that could elect both Trudeau and Lévesque, opinion polls from the time suggest Quebecers had a mixed assessment on the patriation deal, generally supporting the agreement and believing Lévesque should sign it, but objecting to the rest of the country proceeding without Lévesque’s approval.¹⁴ Which is to say, then, that Quebecers seemed neither hostile nor particularly partial to either side in the patriation debate.

In fact, the problem in *And No One Cheered* may stem from the book’s premise that a “Quebec view of Canada” even exists. As divisions on constitutional questions going back to the 1960s attest, the Canadian constitutional debate has largely revolved around which of various Quebec *views* of Canada ought to prevail. In this, patriation was no different, though it did mark the moment when one particular view triumphed. My point, though, isn’t to dismiss the ideas contained in *And No One Cheered* but to place them in perspective; to view the ideas not as authoritative pronouncements on how Quebec viewed patriation but as a particular outlook that resonated with a considerable portion of the Quebec population, including provincial politicians and academics – an

¹³ Trudeau, *Memoirs*, 327.

¹⁴ Days following the November 1981 agreement between Trudeau and the nine premiers, a CROP poll indicated 42 percent of Quebecers believed Lévesque should have signed the agreement against 40 percent who didn’t think he should sign it. A subsequent CROP poll from March 1982, a month before the new constitution was proclaimed, indicated 48 percent of Quebecers disagreed with the Quebec government’s refusal to sign the agreement, while 32 percent agreed. The same poll, however, found that 55 percent of Quebecers disagreed with the federal government’s decision to proceed without the consent of the Quebec government; only 25 percent agreed with Ottawa’s decision. In June 1982, a Gallup poll indicated that 49 percent of Quebecers believed the new constitutional agreement would be “a good thing for Canada” in the long run; 16 percent said it wouldn’t be. William Johnson, *A Canadian Myth: Quebec, Between Canada and the Illusion of Utopia* (Montreal: Robert Davies Publishing, 1994), 187.

Mulroney committed himself to reaching a constitutional accord that Quebecers could endorse “with honour and enthusiasm.” He offered no proposals on what the new constitution ought to look like, but argued now that the patriation agreement of 1982 had not been a just settlement.¹⁹ “One thing is certain,” he declared. “Not one Quebecer authorized the federal Liberals to take advantage of the confusion that prevailed in Quebec following the referendum in order to ostracize the province constitutionally. My party takes no pleasure in the politically weak position in which these deplorable events have placed Quebec.”²⁰ In one respect, Mulroney had adopted the same approach used by Trudeau in the 1980 referendum campaign: he was telling Quebecers that a constitutional problem existed and that in exchange for their votes, he was going to fix it. Of course, in making *his* pledge, Mulroney was condemning Trudeau’s agreement in order to make constitutional reform all the more necessary.

The explanation for Mulroney’s policy reversal hinges on the role played by Lucien Bouchard, and more generally on Mulroney’s desire to win the support of Quebec nationalists. “At Sept-Îles and beyond,” writes Cohen, “Mulroney was making common cause with old-line nationalists and members of the Parti Québécois, building an electoral alliance” that would help him win the 1984 election.²¹ Included in this coalition was Bouchard, an old Mulroney friend who had voted Yes in the 1980 referendum.²² As Sawatsky describes it, Bouchard “acted as his personal adviser on Quebec matters” and was the “guiding force in Mulroney’s conversion from a Trudeau-style federalist in 1983 to an advocate of provincial rights in 1984.”²³ And indeed, it was Lucien Bouchard who wrote Mulroney’s Sept-Îles address. As Bouchard has stated, “I wrote the speech as if I were delivering it myself, giving free reign to the indignation aroused by Quebec’s exclusion” from the constitutional settlement.²⁴ Delivering Bouchard’s words, Mulroney committed himself to reopening the constitution to secure a deal that better resembled the views of nationalist Quebec.

¹⁸ Quoted in Sawatsky, 545.

¹⁹ Patrick Monahan, *Meech Lake: The Inside Story* (Toronto: University of Toronto Press, 1991), 41.

²⁰ Johnson, 196; Sawatsky, 545.

²¹ Andrew Cohen, *A Deal Undone: The Making and Breaking of the Meech Lake Accord* (Vancouver: Douglas and McIntyre, 1990), 68, 92-3. See also Sawatsky, 546-8.

²² Michael Bliss, *Right Honourable Men: The Descent of Canadian Politics from Macdonald to Mulroney* (Toronto: Harper Collins, 1994), 288.

²³ Sawatsky, 546.

It was a serious undertaking, and fraught from the start with serious problems. One of these was the premise under which Mulroney chose to pursue his agenda – i.e., a need to repair the damage inflicted on Quebec in 1982. Offering such a premise for constitutional reform certainly wasn't required; as Monahan has argued, it was perfectly consistent for federalists to have approved Trudeau's decision to patriate the constitution over the objections of the Lévesque government while remaining open to negotiating a new deal with a future government in the province.²⁵ Mulroney, particularly in light of his prior support for patriation, could have easily staked out such a position. And as a unity strategy, it surely would have made more sense to support the federal government's recent actions on the constitution – for which, we've seen, support did exist in the province – and to present further changes as a way to enhance the constitution, the province, and the country. To do the opposite – to denigrate patriation altogether and suggest that its continued existence was an affront to Quebec – was to give federal support to anti-federal sentiment in Quebec. In fact, it was a strategy that actually depended on a continuing sense of animosity in Quebec toward the constitutional order; without the animosity, there was no need for change.

There was also the critical problem that Mulroney's constitutional solution to national unity lacked a basic requirement of any national unity plan, which is national support. Pierre Trudeau had his critics, particularly in western Canada and parts of Quebec, but his constitutional vision was still rather widely supported in the country, including the West, where his commitment to provincial equality and his adoption of Diefenbaker's One Canada philosophy found a receptive audience, and including Quebec, where he won the 1980 referendum and fought his opponents to at least a draw in the public opinion battle on patriation. His national unity policy, in other words, was effective because he was able to build a coalition between federalist Quebec and the rest of Canada. Mulroney, in basing his national unity strategy on a vision that appealed to more nationalist elements in Quebec, was attempting a much more difficult mission. It was a strategy that would work well in Quebec, but building a bridge from Sept-Îles to the rest of Canada was going to be difficult.

²⁴ Lucien Bouchard (Dominique Clift, trans.), *On the Record* (Toronto: Stoddart Publishing, 1992), 110.

²⁵ Monahan, *Meech Lake*, 19.

He knew it, too, if his lack of a unified message on national unity is any indication. Sawatsky writes of Mulroney's 1984 election campaign:

Unlike the campaign in English Canada, which played heavily on the party name, the Quebec campaign never mentioned the word "Conservative." Other words also got left behind in English Canada. Mulroney could not tour western Canada without stirring up the vision of John Diefenbaker and voicing the phrase "One Canada," but inside Quebec the words "Diefenbaker" and "One Canada" never passed his lips. The key words in the Quebec campaign were "Québécois," "solidarity," and "change."²⁶

In other words, despite his constitutional conversion at Sept-Îles, Mulroney continued to present himself in the rest of the country as a Trudeau-style federalist or, as he preferred, a Diefenbaker-style federalist, for it amounted to the same thing: both former prime ministers had used the term One Canada in opposing the two nations theory of Canada on which Quebec's claims for constitutional special status were premised. Mulroney, unlike his predecessors, wanted to have it both ways. And yet, judging by his refusal to voice the vision outlined in Sept-Îles when speaking in other parts of the country, he was aware he couldn't have it both ways. He could promise Quebecers constitutional change in the name of national unity, but making the same promise in the rest of the country would itself create division. Mulroney knew it and in 1984 tried to work around it. As a campaign strategy this may have served him well, but as he moved towards implementing his constitutional programme, and as more Canadians took notice, it would become harder to conceal the constitutional differences between nationalist Quebec and the rest of Canada.

But this is to anticipate events in a way Mulroney didn't. For Mulroney, the plan wasn't to build a national democratic constituency for a single constitutional vision; the plan was to reach a constitutional agreement through closed-door bargaining with provincial leaders. Bliss writes, rather critically, of the final negotiating session that produced the Meech Lake Accord in June 1987:

Following classic industrial-relations tactics, Mulroney kept the premiers bargaining for nineteen hours. The Prime Minister of Canada acted as the honest broker among the premiers. Ottawa appeared to have no position of its own to advance, except the desirability of cutting a deal. At times during the night Mulroney was told by the premiers of Manitoba and Ontario, "We're fighting your battle" ... "You should speak up" ... "Surely this concerns *you*, Prime Minister."

²⁶ Sawatsky, 546-7.

Finally the last holdout, exhausted Ontario premier David Peterson, gave in out of fear of having to take the blame for the deal's collapse. Without consulting anyone other than their elite circle of advisers, the eleven first ministers announced they had finalized the Meech Lake Accord.²⁷

"Mulroney, the master negotiator, had done what Trudeau could not," Bliss also writes, describing the joy felt by the politicians at Meech Lake. "He had brought everyone together. Mulroney declared the rebirth of a nation."²⁸ And if a new constitutional deal meant national reconciliation, as Mulroney had come to suggest, then he and the premiers had delivered: "the bonds of Confederation will be strengthened," Mulroney announced, "and the unity of our people ... enhanced."²⁹

On the day the Meech Lake Accord was signed, the country certainly was united. But the country had been united the day before, and the year before. Indeed, the justification for constitutional reform as a national unity cure was looking particularly weak by 1987. We've seen that the inspiration for Meech Lake came from the nationalist reaction to patriation; from "the profound sense of illegitimacy" surrounding patriation (as *And No One Cheered* put it), or the "indignation aroused by Quebec's exclusion" (as Bouchard described). By the mid-1980s, however, nationalist sentiment in Quebec was not running strong, not on the constitution or anything else. The political scientist Louis Balthazar, himself a nationalist Quebecer, wrote in 1986: "Since the beginning of the 1980s, nationalism has ceased to inspire the bulk of activities of the society. The spirit of the Quiet Revolution ... has certainly disappeared. The state of Quebec is no longer glorified. The *nation Québécoise* is no longer the privileged point of reference. So we must acknowledge the end of a period of Québécois nationalism."³⁰ The decline of separatism was particularly evident; a January 1985 poll in *La Presse* showed support for sovereignty-association at 19 percent, with another four percent favouring independence.³¹ By the time Mulroney got together with the premiers at Meech Lake, therefore, there was no national unity requirement for a new constitutional deal. If anything, the national unity peace that already existed had made the constitution an

²⁷ Bliss, 293-4 (ellipses and italics in original).

²⁸ Ibid., 292-3.

²⁹ Cohen, 18.

³⁰ Louis Balthazar, *Bilan du nationalisme au Québec* (Montreal: L'Hexagone, 1986), 187. Translated in Johnson, 199.

³¹ Graham Fraser, *René Lévesque and the Parti Québécois in Power*, 2nd ed. (Montreal: McGill-Queen's University Press, 2001), xxvi.

irrelevant issue. As Vastel has written, when “Bourassa relaunched [in 1985] the idea of recognizing the distinct character of Quebec society,” the idea that was to form the centrepiece of the Meech Lake Accord, “the question left the Quebec public largely indifferent.”³²

The lack of interest was even evident for a while after Meech was signed. In an April 1988 poll, 63 percent of Quebecers said they were “not informed” about the agreement; asked if Meech Lake would be “a good thing for Canada,” 32 percent said yes, 18 percent said no, and 50 percent didn’t know.³³ The agreement, in fact, enjoyed about a year-and-a-half of peaceful existence before becoming the focus of an intense nationwide debate, the June 1990 deadline for ratification by the nation’s legislatures looming all the while.

That said, the debate did begin to take shape early on, notably in Quebec where the traditional divisions on the constitution quickly emerged. In Quebec’s National Assembly, the debate revolved around whether the Quebec government had secured a deal that met enough of Quebec’s traditional demands to justify signing the Canadian constitution. The opposition Parti Québécois condemned the agreement for failing to meet these demands, even as they had been outlined by federalist provincial governments since the 1960s.³⁴ The Bourassa government countered by arguing that Meech Lake was the best Quebec could hope for given the province’s weak negotiating position after patriation, and that the deal, though modest, still marked a significant achievement for the nationalist vision. The chief victory in this regard was the distinct society clause, which stated that the “role” of the Quebec legislature was to “preserve and promote the distinct identity of Quebec,” a clause that was to be used by the courts in interpreting the Charter of Rights and Freedoms.³⁵ Bourassa told the Quebec legislature in 1987:

³² Vastel, 96. See also Bliss, 288.

³³ This was a Gallup poll published in *La Presse*. Johnson, 250.

³⁴ Kenneth McRoberts, *Quebec: Social Change and Political Crisis*, 3rd ed. (Toronto: McClelland and Stewart, 1993), 402-3.

³⁵ Peter Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2nd ed. (Toronto: University of Toronto Press, 1993), 140; McRoberts, *Quebec*, 397. The other conditions of the agreement were extended to all provinces: an expanded veto over constitutional change; the appointment by the federal government of Supreme Court judges from lists provided by provincial governments; a recognized provincial role over immigration; and the right of provincial governments to opt out, with compensation, of new national shared-cost programmes in areas of provincial jurisdiction. Russell, 136-8.

We must acknowledge that in the distinct society we are getting a major gain that is not limited to the purely symbolic, since the country's entire constitution must henceforth be interpreted to conform with this recognition... It must be underlined that the entire constitution, including the Charter of Rights, will be interpreted and applied in the light of the article on distinct society. This directly involves the exercise of legislative powers, and will allow us to consolidate our gains and make even greater advances.³⁶

In a foreshadowing of things to come, Bourassa also acknowledged at the outset that one area where he intended to use the distinct society clause was in protecting the province's language laws from Charter challenges.³⁷

With this challenge to the policies and vision of patriation, Pierre Trudeau offered his opinion on Meech, beginning with an article published the same day in the *Toronto Star* and *La Presse* less than a month following the draft agreement signed at Meech Lake. Describing the agreement as a "total bungle," Trudeau took particular aim at the distinct society clause, criticizing the clause for mandating the promotion of French in Quebec and for endangering the rights of the province's anglophone minority.³⁸ "For those Canadians who dreamed of the Charter as a new beginning for Canada," he wrote, "where everyone would be on an equal footing and where citizenship would finally be founded on a set of commonly shared values, there is to be nothing left but tears." Just as the debate within the provincial legislature took place in reference to Quebec's traditional constitutional demands, Trudeau attacked Meech Lake for threatening his long-standing commitment to Quebec's integration with Canada, to his belief in a shared sense of community in Canada. His piece was titled "Say Goodbye to the Dream of One Canada."

This made Trudeau's argument more than a simple policy critique; his criticism of Meech Lake was that it threatened the survival of Canada. The agreement, he wrote, was an effort to engage in a "nationalist bidding war" in Quebec, a game in which the Péquistes would always hold the advantage, and that the agreement could therefore "clear the way for the real saviours: the separatists." Mulroney, he said, by recognizing the claim of the Quebec government for constitutional special status, "has not quite succeeded in achieving sovereignty-association, but he has put Canada on the fast track for getting there." Further, "All this was done under the pretext of 'permitting Quebec to fully participate in Canada's constitutional evolution.' As if Quebec had not, right from

³⁶ Vastel, 112-3 (ellipsis in original). The passage is from a June 18, 1987 speech.

³⁷ Vastel, 112.

the beginning, fully participated in Canada's constitutional evolution!" With this, Trudeau challenged the premise underlying Mulroney's decision to reopen the constitution. The 1982 accord, he maintained, was fully legitimate and under that agreement "the federation was set to last a thousand years!" Far from feeling aggrieved and demanding constitutional change in the aftermath of patriation, Quebecers, with their "usual maturity, applauded the players and then, yawning, turned to other matters."

The next three years demonstrated the degree to which the Trudeau vision, as embodied in patriation and challenged in Meech, had taken hold in English-Canada (including anglophone Quebec).³⁹ The argument he used in 1987 to attack Meech Lake – criticizing distinct society for offering constitutional special status to Quebec and for threatening Charter rights – formed the basis of the English-Canadian opposition to the agreement that eventually brought Meech down. In fact, even as Mulroney was proclaiming Meech Lake a national unity success in mid-1987, a *Maclean's* poll showed 56 percent of Canadians outside Quebec were opposed to the distinct society clause, with a near majority in Ontario and the West viewing the entire package as giving too much to Quebec.⁴⁰ These were signs of the serious split between Quebec and the rest of Canada that Mulroney had known about as early as 1984, and that would shortly tear the country in half.

An irony of the Meech Lake debate, though, is that as opposition to the agreement gained force outside Quebec, a constitutional crisis developed that appeared to strengthen Mulroney's case; the country, as Trudeau predicted, indeed witnessed a nationalist bidding war in Quebec, with Meech Lake the first in a series of events that seemed to be clearing the way for the separatists, but with the effect that this bolstered Mulroney's claim that national unity depended on the passage of his constitutional programme.

Essentially, as Russell has written, "all hell broke loose," beginning with the Supreme Court decision on December 15, 1988 declaring Quebec's French-only sign law an infringement of the Charter right to free expression.⁴¹ Almost immediately Quebec

³⁸ Trudeau, "Say Goodbye to the Dream of One Canada," *Toronto Star* (27 May 1987).

³⁹ McRoberts, *Quebec*, 400; Gagnon, 113.

⁴⁰ In Ontario, 46 percent thought the accord gave too much to Quebec; in the West, 47 percent; in Atlantic Canada, 38 percent. The poll was taken in June 1987, just after the agreement had been finalized.

McRoberts, *Quebec*, 401.

⁴¹ Russell, 145.

nationalists launched large rallies in defence of the language legislation, and on December 19 the Bourassa government announced its intention to reimpose the French-only restriction on outdoor signs, and to shield the law from further court action by invoking the Charter's notwithstanding clause.⁴² What was already a thorny constitutional matter became thornier when Bourassa linked his use of the notwithstanding clause to the distinct society clause of the Meech Lake Accord, declaring that the constitutional override would have been unnecessary were distinct society already in place.⁴³ Instantly the tide in the rest of Canada turned against Meech Lake.⁴⁴ On December 20, a *Globe and Mail* editorial lambasting Bourassa's decision declared, "As of yesterday, Meech Lake was dead in the water, perhaps simply dead."⁴⁵ Monahan, too, in his insider's account of Meech Lake, wrote that after the events of December 1988, "there was virtually no chance that the Meech Lake Accord would be ratified."⁴⁶ The minority government of Manitoba, supported by both opposition parties, immediately withdrew consideration of Meech Lake from the provincial legislature. By the time Clyde Wells became premier of Newfoundland and rescinded his province's support for the agreement in March 1990, joining Manitoba and New Brunswick in opposing the deal months short of the June 27 deadline, Meech Lake looked in worse shape than ever.

Mulroney, though, still had the ultimate argument, the national unity argument he'd been using from the start. At the end of May 1990, in announcing a first ministers' conference in Ottawa as a final effort to save Meech Lake, he told the House of Commons, "What is in dispute is modest, extremely modest, compared with what is really at stake. What is really at stake is Canada."⁴⁷ This, essentially, was the case put to each of the hold-out premiers during the dramatic final bargaining session in early June. One by one, it began to work. First there was Premier McKenna of New Brunswick, followed days later by Premier Filmon and the opposition leader of Manitoba – all declared their support for Meech Lake, and all on the basis of a desire to keep Canada

⁴² Ibid., 145.

⁴³ Ibid., 146.

⁴⁴ Ibid., 146; Monahan, *Meech Lake*, 164.

⁴⁵ Johnson, 221.

⁴⁶ Monahan, 164.

⁴⁷ Johnson, 244.

together.⁴⁸ As McKenna commented, he had “accepted that, should Meech Lake fail ... the separatist forces in Quebec would be beyond our control ... and we would be facing the potential disintegration of Canada.”⁴⁹ That left all focus, all pressure, all responsibility for the break-up of Canada on Clyde Wells, “a nearly broken man,” in the words of Bliss, by the end of the week.⁵⁰ Finding himself (as he put it) “constantly being pressured to agree to do something under the fear and threat that failure to do it may do irreparable harm to the country,” he too relented, agreeing in the end to submit the Meech Lake Accord to a free vote in the Newfoundland legislature.⁵¹

But however effective Mulroney’s argument was in selling Meech Lake, it also offered legitimacy to the separatist cause, particularly in the event Meech Lake were to fail. After the chaos that erupted with the events of December 1988, Mulroney’s effort to sell Meech returned to the anti-patriation theme established in Sept-Îles, but with even stronger language. In June 1989, Mulroney declared: “Above all, we must never forget that, in 1982, Quebec was left alone, isolated and humiliated. How could we, for a single moment, accept Quebec being excluded from national life? It was the worst injustice ever inflicted on Quebecers.”⁵² In December 1989, he remarked similarly: “We have seen a federal prime minister erect a stage on Parliament Hill and with great pomp, surrounded by his ministers, sign a constitution that isolated and humiliated Quebec. That Canadian prime minister was not Brian Mulroney! Because, for Brian Mulroney, a constitution without Quebec is absolutely inconceivable – it would be a major error written in capital letters in the history of our country.”⁵³ Thus, when Meech Lake did die, failing to come to a vote in both Manitoba and Newfoundland, there Quebec sat – still “isolated,” still “humiliated,” still living under the “worst injustice ever inflicted on Quebecers.” There are, of course, limits to how much Mulroney’s rhetoric can be said to have contributed to the separatist surge following Meech, but certainly the logic of separatism was the logic Mulroney had been using since Sept-Îles: that national unity required a new constitution; that, from the standpoint of Quebec, the existing constitution was flatly unacceptable.

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⁴⁸ Ibid., 247.

⁴⁹ Ibid. (ellipses in original).

⁵⁰ Bliss, 299.

⁵¹ Claire Hoy, *Clyde Wells: A Political Biography* (Toronto: Stoddart Publishing, 1992), 207.

⁵² Cohen, 63.

⁵³ Johnson, 212.

Within days of the collapse of the Meech Lake Accord, support for Quebec separation had reached its all-time high, as much as 70 percent according to one poll.⁵⁴

“The Québécois tell us that that’s it,” Gil Rémillard now declared, “we can no longer continue in the system which led to the failure of Meech Lake.”⁵⁵ And so the post-Meech era began, not so much as something new but as a continuation of the same policy. Rémillard, who in 1983 had used patriation to discredit the legitimacy of the Canadian constitution, was now using Meech Lake to make the same point, and from his position as Quebec’s minister of constitutional affairs demanded comprehensive change. The nationalist bidding war was such that the Bourassa government was now prepared to accept Quebec’s inclusion in Canada only if it came with a vast transfer of power to the Quebec government; otherwise, Quebec was on its way out. That, at any rate, was the government’s initial bargaining position, and it was backed by referendum legislation proposing a vote on Quebec sovereignty for no later than October 1992, though with the proviso that if an acceptable offer on “renewed federalism” came from the rest of Canada, the referendum could be about that instead.⁵⁶ The options, though, were clear – there was to be a united Canada with a new constitution or there’d be no Canada at all.

“In effect,” McRoberts writes, “Quebec adopted the ‘knife at the throat’ strategy proposed by Professor Léon Dion in his dramatic presentation to the Bélanger-Campeau Commission.”⁵⁷ Like the Allaire report adopted by the Quebec Liberal Party, the Bélanger-Campeau report, commissioned by the National Assembly, recommended radical constitutional change as the price for Quebec’s remaining in Canada; each report effectively proposed to dismantle the federal government, at least as federal power applied to Quebec, in order to secure Quebec’s autonomy from the rest of Canada.⁵⁸ The problem with this “knife to the throat” strategy, however, was that it depended on the rest of Canada so fearing Quebec secession that the province’s demands for change would be accepted. McRoberts has written that Canadians outside Quebec “were not prepared to take the [separatist] threat seriously,” and therefore were not prepared to deal with

⁵⁴ This Léger & Léger poll was published in *Le Journal de Montréal* on July 5, 1990. Asked, “Are you in favour of Quebec becoming a distinct country?” 70 percent of respondents were “very favourable” or “rather favourable.” Johnson, 258.

⁵⁵ Johnson, 262.

⁵⁶ McRoberts, *Quebec*, 452.

⁵⁷ Ibid.

Quebec. There is compelling evidence, though, as William Johnson has noted, that Canadians outside Quebec were not prepared to go along with Quebec even if they did accept the separatist threat:

A public opinion poll taken in late January 1991 ... showed little readiness in the rest of Canada to accommodate the kinds of changes proposed by Allaire and Bélanger-Campeau. CROP put the following question to Canadians outside Quebec: "Imagine that Quebec demands additional powers and a reform of the federation, otherwise it will become independent in two years' time. Should Canada negotiate to satisfy Quebec's demands?" In reply, 26 percent were in favour of such negotiations to satisfy Quebec, while 10 percent did not give an opinion; a massive 65 percent said they were opposed.⁵⁹

By early 1991, Mulroney was also making it clear that while constitutional reform was on his agenda, the wholesale changes being proposed in Quebec were not.⁶⁰

The effect of this reaction to Quebec's demands was to leave the difficult choice not with the rest of Canada but with the people of Quebec and their premier; they could follow through on their threat to separate in the absence of radical constitutional change, or they could pull back and seek more modest reforms. By mid-1992, there were indications of where Quebec was headed; there were signs of a federalist recovery in the province – sovereignty and federalism were now even in the polls – and Bourassa, having refused to declare himself a federalist in the wake of Meech Lake's collapse, was now giving every indication that he was committed to working within Canada.⁶¹ "I don't think that I would be carrying out my responsibilities as premier," he commented in July 1992, "if I didn't take every measure to try and reach an agreement acceptable to Quebec and acceptable to Canada, if I didn't take every measure to avoid the break-up of the Canadian federation."⁶² He was still conflating national unity and constitutional reform, but the constitutional demands had been lowered.

In the end, getting half-way towards a new deal – that is, getting the politicians to agree on constitutional change even if the Canadian people rejected it in a national referendum – may indeed have secured Canadian unity in these years. The signing of the Charlottetown Accord allowed the Bourassa government to cancel its sovereignty

⁵⁸ Russell, 159-163; McRoberts, *Quebec*, 450-2.

⁵⁹ Johnson, 277.

⁶⁰ *Ibid.*, 283.

⁶¹ Russell, 197; Johnson, 253, 312.

⁶² Johnson, 326.

referendum and hold a vote on constitutional reform in its place, and the country dodged a bullet.

But, of course, the rejection of the Charlottetown Accord still left patriation as the constitutional law of the land, meaning the problem so long identified by so many – the injustice of patriation, the inability of that agreement to provide lasting national unity peace – persisted. Following the demise of Meech Lake, Laforest wrote in the course of denouncing Trudeau’s constitutional work, “I sense that this country will not succeed in overcoming the present crisis, which is too severe.”⁶³ The failure to come to a constitutional agreement at Charlottetown was bringing similar pronouncements of Canada’s imminent demise. Because of Meech and Charlottetown, Rotstein wrote, Canada is facing a “constitutional crisis” that makes the “dismantling of Canada ... more than likely.”⁶⁴ The only way out remained a new constitutional settlement. Gagnon, who also noted the existence of a “constitutional crisis” following Charlottetown, argued that the country’s problems were “impossible to solve ... within the present constitutional framework,” and wrote that the “future of Canada depends on a variety of factors, among which are the imagination of its leaders, the will to accept Quebec’s special place in Canada, and more importantly, the capacity of these leaders to find devices that subsume the application of the Canadian Charter of Rights and Freedoms under a territorial formula to account for Quebec’s special and unique needs in the Canadian federation.”⁶⁵ Clearly, the constitutional reform movement had not reached its end.

The Chrétien Years Begin

A short time after announcing his bid for the leadership of the federal Liberal Party in January 1990, Jean Chrétien bumped into Stanley Hartt, chief of staff to Prime Minister Mulroney, at an airport. “You guys made one big goddamn mistake in reopening the constitution,” Chrétien told Hartt. “When I become prime minister, I will fire the first person in my government who even mentions the C-word.”⁶⁶

⁶³ Laforest, *Trudeau and the End of a Canadian Dream*, 124.

⁶⁴ Abraham Rotstein, “A Difficult Transition: English-Canadian Populism vs Quebec Nationalism,” in *Beyond Quebec: Taking Stock of Canada*, 371-7, 373, 377.

⁶⁵ Gagnon, 108, 112.

⁶⁶ Greenspon and Wilson-Smith, 174.

Like Trudeau, Chrétien had taken an instant dislike to the Meech Lake Accord.⁶⁷ He was particularly troubled by the recognition of Quebec as a distinct society and the possibility that the clause would be used to undermine Charter rights.⁶⁸ The position he took during his leadership campaign, which occurred in the midst of the feverish debate on Meech, was that the agreement needed to be amended – or “clarified” – to protect the Charter from the distinct society clause.⁶⁹ More broadly, though, Chrétien expressed concerns that distinct society meant “in effect that we have nine provinces on one hand and Quebec on the other,” which would have “serious implications for the role of the national government and for the very nature of Canada.”⁷⁰ “I always fought for equality,” he remarked. “I don’t want special status.”⁷¹ Not restricting himself to a policy critique, Chrétien also lashed out at Mulroney’s tactics in pursuing constitutional change. In *Double Vision*, Greenspon and Wilson-Smith write, “By Chrétien’s telling of it, Mulroney had reopened the [constitutional] issue by encouraging Quebecers to feel aggrieved that they were not formal signatories to the new constitution. If you tell people often enough that they have been screwed, Chrétien said to an acquaintance, sooner or later they will believe you, and there is a problem.”⁷²

The 1982 agreement, in other words, wasn’t the problem at all; the problem was Mulroney’s attack on that agreement and the effort to change it, and it was this effort that Chrétien vowed to end. Sticking to his promise to avoid the C-word, Chrétien told all Canadians in the 1993 election campaign that he would not reopen the constitutional file under any circumstances, a position he steadfastly maintained through his early months in office.⁷³ With the provincial Liberals facing a tough battle for re-election in Quebec, Chrétien ruled out any effort to assist the party ahead of the September 1994 vote, including making even minor constitutional changes.⁷⁴ After the Parti Québécois took power and prepared their referendum to exit Canada, Chrétien continued to govern as before. Throughout the pre-referendum period, the prime minister maintained that the

⁶⁷ Lawrence Martin, *Chrétien: The Will to Win* (Toronto: Lester Publishing, 1995), 371.

⁶⁸ *Ibid.*, 371; Greenspon and Wilson-Smith, 174.

⁶⁹ Greenspon and Wilson-Smith, 174, 178.

⁷⁰ Edison Stewart, “Chrétien’s indistinct record on distinct society status,” *Toronto Star* (21 April 1996).

⁷¹ *Ibid.*

⁷² Greenspon and Wilson-Smith, 174.

⁷³ Johnson, 363.

⁷⁴ Greenspon and Wilson-Smith, 178.

best way he could defend Canada was to offer good government and focus on economic issues.⁷⁵ He did commit to “evolving federalism” – defending the status quo just sounds bad – but he never developed the concept other than to say it did not include constitutional change.⁷⁶ As Greenspon and Wilson-Smith put it, the sum of his message was “there would be no special treatment for Quebec on the eve of a referendum.”⁷⁷

Chrétien’s decision to rule out constitutional change was informed by his long-held view that Quebecers, whatever the circumstances, would never vote to separate. In his maiden speech in the House of Commons in 1963, Chrétien had declared, “I am confident that the present separatist movement is not serious,” and he continued to operate under much the same premise as prime minister.⁷⁸ In ruling out help for the provincial Liberals prior to the election, Chrétien was deliberately settling on a strategy of waiting for the election of a PQ government so that he could defeat the separatists in the referendum to follow.⁷⁹ Convinced the No side would win the referendum decisively, Chrétien looked forward to settling the sovereignty question once and for all.⁸⁰

For a while, as the October 30 referendum approached, everything was proceeding according to plan. It was in mid-October that the first signs of serious trouble arrived for the No campaign, when a new batch of polls showed the federalist lead, which had been ten points earlier in the month, nearly gone.⁸¹ Chrétien suddenly had doubts; his fellow Quebecers indeed seemed to be moving toward separation, and the constitutional option he had forsaken now seemed the likeliest way to secure the support of wavering nationalists in Quebec. And so Chrétien’s resolute stand – no special offers, no talk about the constitution – began to give way. The first indication came in his October 18 declaration that Quebec was a place that “by its language, its culture, and its institutions forms a distinct society.” By October 24 in Verdun – the polls now showing the Yes leading by seven – Chrétien gave way completely, declaring a wholehearted commitment to recognizing Quebec as a distinct society and offering the province a veto over

⁷⁵ Ibid., 181.

⁷⁶ “Liberal, Reform leaders cool rhetoric,” *Globe and Mail* (21 September 1995).

⁷⁷ Greenspon and Wilson-Smith, 181.

⁷⁸ Ibid., 179, 305; George Feaver, “Canadian Political Miscalculation? Quebec’s Referendum 95,” *Government and Opposition*, v. 31 (Winter 1996), 45-61, 49-50.

⁷⁹ Greenspon and Wilson-Smith, 178-9.

⁸⁰ Ibid., 179; “PM hints at refusal to offer co-operation,” *Globe and Mail* (19 September 1995).

⁸¹ Greenspon and Wilson-Smith, 308, 313.

constitutional change, promises he repeated the following evening in a televised address.⁸² In an abrupt change of course, Chrétien was now offering Quebec the two central elements of the Meech Lake Accord.⁸³ Recognizing the difficulty of achieving constitutional reform, Chrétien was careful to avoid promising to constitutionally entrench either measure, suggesting only that he supported these measures in or out of the constitution. Nevertheless, as a commitment to at least pursue constitutional change, Chrétien's new policy marked a monumental shift in his Quebec strategy.

And, indeed, the commitment to embark on constitutional reform may well have salvaged a federalist victory in the final week of the referendum campaign. The authors of *Double Vision* write:

As the polls later showed, the dramatic turnaround for the federalists came during precisely the period of the Verdun rally and Chrétien's televised speech. Between October 22 and 24, the federalists' internal polling of 1000 respondents had shown the No down by five points; their next poll of 700 respondents, taken October 25 and 26, put it ahead by 3.7 points. That speech, said [pollster Grégoire] Gollin, "was the real turning point for the No, because of the promises of change. It gave uncertain voters a reason to come back to the No."⁸⁴

But for many federalists, it seemed a reprieve as much as a victory. Not only were the prime minister's promises waiting to be fulfilled, Quebec's allegiance to Canada appeared to have been conditioned upon them. The commitment to constitutional change, in other words, had been enough to preserve Canada in the final week of the referendum, but it seemed a new deal would have to be struck to secure Canadian unity for the long term.

It all came as validation to those who had been arguing the case for constitutional reform since the 1980s. "The [constitutional] project is, to say the least, incomplete," Bergeron had warned in the aftermath of patriation, and Quebecers were now driving the message home.⁸⁵ Indeed, the inadequacy of the 1982 constitutional agreement marked an important theme in the post-referendum analysis of what had gone wrong for federalists. On the day after the referendum, McRoberts wrote:

⁸² Ibid., 323; Feaver, 51.

⁸³ Actually, Chrétien's offer of an absolute veto over constitutional change went further than the more limited veto granted to Quebec under the Meech Lake Accord.

⁸⁴ Greenspon and Wilson-Smith, 326-7.

⁸⁵ Gérard Bergeron, "Quebec in Isolation," *And No One Cheered*, 59-73, 61.

... if it is now crystal clear that something is fundamentally wrong with the Canadian political order what do we do about it? We need to ponder that question very carefully. After the 1980 referendum, the urgent need to resolve the Quebec question was invoked by the Trudeau government to initiate a process of constitutional change that only made matters far worse. Indeed, this recent brush with the break-up of Canada was the direct result of that error. This time, if we are to resolve the question we must do it properly.⁸⁶

The following day, Jeffrey Simpson also traced the latest turmoil to the Trudeau settlement:

What remains self-evident from Monday's referendum is that Quebecers will not stay in Canada without fundamental changes, and even then no guarantees can be offered that the province will remain. Quebecers will most certainly not remain in a Canada formed in the model devised by former Prime Minister Pierre Trudeau. That's the one that Prime Minister Jean Chrétien helped create and in which he passionately believed.⁸⁷

The referendum had reinforced the view that the national unity problem was essentially a constitutional problem. Chrétien himself had accepted the argument, and the Canadian constitutional adventure was set to resume.

⁸⁶ McRoberts, "What do Canadians outside Quebec want?"

⁸⁷ Simpson, "The Quebec-born Prime Minister who lost touch with his province," *Globe and Mail* (1 November 1995).

Chapter 2: Plan B, from Origins to 1996

Introduction

In 1994, the Vancouver-based think-tank the Fraser Institute published a book by former British Columbia Liberal leader Gordon Gibson. Written in the aftermath of the failures of Meech Lake and Charlottetown and in the lead-up to the 1995 referendum, *Plan B: The Future of the Rest of Canada* looked at the Canadian unity crisis, and offered a new response.¹ For decades the country had been reacting to the national unity threat emanating from Quebec through a process of constitutional reform, an effort that had turned particularly tumultuous in the years preceding Gibson's work. As we've seen, this effort depended on equating national unity with constitutional change, and was carried out in the 1980s and early 1990s under repeated warnings from the prime minister and others about the dangers the country faced if a new deal wasn't reached. Gibson approached his work with much the same understanding – that in the absence of constitutional change, the country was perhaps doomed. In a break, though, from the policy of the Canadian government of these pre-referendum years, Gibson was prepared to follow his recognition of the separatist threat through to its conclusion. He was prepared, that is, to consider how the secession of Quebec might proceed, not because he thought the province should secede, but because he thought the province might, and because he felt the rest of the country needed to prepare for it. And so came *Plan B*, designed to anticipate the issues that would need to be resolved during negotiations over the country's break-up, and to develop a plan for resolving them.

To those of us who have come to associate Plan B with its post-referendum incarnation as a national unity strategy, an alternative strategy to constitutional reform, Gibson's work serves as a reminder of how discussion of the rules of secession began in

¹ Gibson, *Plan B: The Future of the Rest of Canada* (Vancouver: The Fraser Institute, 1994).

Canada. To Gibson, Plan B wasn't a national unity alternative to constitutional reform; rather, consistent with the general usage of the term, Plan B was a back-up plan, to be used only in the event the country couldn't be held together through constitutional means. Gibson, in fact, included in his work a chapter on how the country's break-up could be avoided through large-scale decentralization, much as other Plan B scholars – David Cameron and Patrick Monahan, for example – were proponents of constitutional change in the form of Meech Lake. Such was the association between constitutional reform and national unity in the wake of Meech that few thought of achieving unity any other way.

So it was with the Reform Party, which emerged in the years preceding the 1995 referendum as the lone national party prepared to contemplate the rules of Quebec secession. Though Reform leaders did believe that establishing a Plan B policy could convince Quebecers of the costs of separation, thereby making the option less appealing, they never advanced Plan B in the pre-referendum years as a unity strategy *per se*. In fact, like Gibson, Reform accepted that national unity could well depend on constitutional change, and it was precisely because Reform opposed the Quebec constitutional agenda that the party was willing to confront the issue of Quebec secession. As I describe in this chapter, the Reform Party preferred a united Canada, but accepted that a back-up plan on secession needed to be in place.

It wasn't until after the 1995 referendum that the vision of a Plan B unity strategy really emerged, as federalists reacted to the near collapse of Canada by arguing that separatist views on how Quebec independence would be achieved needed to be countered more effectively. In this new era, Reform continued to play a leading role, but support for Plan B was broadened, and included the critical support of Quebec federalists determined to remain in Canada. It even came to include, eventually, Jean Chrétien and Stéphane Dion, who tried for months to make good on the referendum promise for constitutional change, before accepting Plan B as the best, perhaps only, unity strategy available.

The Origins of Plan B

Plan B has its origins in the policies developed by the Reform Party during the constitutional debates of the Mulroney years. Though the party had virtually no presence in Ottawa during this time, the consensus that existed within the Canadian political

establishment over Meech Lake and Charlottetown allowed Reform to emerge as the voice of a great many Canadians who dissented from the views of the political elite, and who wanted a new approach to Quebec. The policies enunciated by the Reform Party in reaction to the constitutional reform movement of the late 1980s and early 1990s were to culminate years later in the passage of the Clarity Bill.

The ideas that would eventually produce a Plan B policy in Canada can be found as early as 1989, in a speech Preston Manning delivered to a Reform Party gathering in Edmonton amidst the national debate over the Meech Lake Accord. Manning declared:

The Reform Party supports the position that Confederation should be maintained, but that it can only be maintained by a clear commitment to Canada as one nation, in which the demands and aspirations of all regions are entitled to equal status in constitutional negotiations and political debate, and in which freedom of expression is fully accepted as the basis for language policy across the country. Should these principles of Confederation be rejected, Quebec and the rest of Canada should consider whether there exists a better political arrangement which will enrich our friendship, respect our common defence requirements, and ensure a free interchange of commerce and people, by mutual consent and for mutual benefit.²

There were two components to this policy pronouncement, which together formed the heart of Reform policy on Quebec in the years prior to the 1993 federal election. The first was the preference for Canadian unity along with a vision of what a united Canada looks like. “Confederation should be maintained,” Manning stated, committing himself first and foremost to the country’s unity. There were echoes of Trudeau, however, when Manning declared that a united Canada could “only be maintained by a clear commitment to Canada as one nation,” and that this meant rejecting constitutional special status for Quebec and uniting the country instead around principles of regional equality and free expression. And, in fact, there was a good reason Manning sounded like Trudeau, for his remarks were largely a defence of the constitutional status quo – in other words, patriation – against the proposed changes of Meech. Though his statement also reflected the Reform Party constitutional position, which called for decentralization based on provincial equality and a Triple-E Senate (elected, effective, and equal in provincial representation), it’s important to note that Reform’s constitutional position over the years – at Meech, at Charlottetown, and in the aftermath of the 1995 referendum – has for all

² Tom Flanagan, *Waiting for the Wave: The Reform Party and Preston Manning* (Toronto: Stoddart Publishing, 1995), 44.

intents and purposes been to defend the constitutional status quo against proposed changes inspired by the constitutional demands of Quebec. In fact, Manning campaigned in the Charlottetown referendum by telling Canadians to vote No as a way to end the constitutional wrangling, an acknowledgement that his own constitutional agenda was no longer viable, and that the existing constitution was workable.³

This leads to the second part of Manning's pronouncement: the rejection of the Quebec constitutional agenda and an acceptance of the consequences for national unity. Actually, look at the way Manning framed the constitutional issue: it wasn't the Reform Party that was rejecting Meech Lake; rather, it was the proponents of Meech who were rejecting the principles on which Canadian unity must be maintained ("Should these principles of Confederation be rejected..."). In other words, there was a basis for Canadian unity, and if the people of Quebec could not accept the terms, then perhaps it was time to part ways. This was the same message Manning delivered during the next constitutional round, as he commented in the lead-up to the Charlottetown referendum that he could "live with the loss of Quebec."⁴ The party position was perhaps stated most succinctly in an internal memo written by Stephen Harper, who became chief policy officer of Reform in 1987 and was the party spokesman on constitutional affairs through the mid-1990s. Writing to Manning in 1989, Harper stated that Reform "must be prepared to effectively ignore the national unity issue, neglect organizational effort in Quebec, and ultimately risk calling the separatist bluff."⁵ Unwilling to accommodate Quebec through constitutional change, Reform was prepared to accept the consequences of that decision. In effect, then, the party policy was to polarize the constitutional question as a choice between the existing Canada and an independent Quebec, with the onus on Quebecers to choose – a policy that foreshadowed the Clarity Bill.

The willingness to confront Quebec secession was also evident during the Mulroney years in the attitudes of a significant portion of Canadians outside Quebec, whose views were reflected in Reform Party policy. Like Reform leaders, these

³ "End constitutional wrangling by voting No, Manning says," *Globe and Mail* (11 September 1992); Roger Gibbins, "Western Canada: 'The West Wants In'," in *Beyond*, 45-60. See also Preston Manning and Stephen Harper, "There will be no going back," *Globe and Mail* (3 October 1995), in which the authors advance an agenda for reforming the federation but rule out constitutional change.

⁴ "Manning can live with loss of Quebec," *Globe and Mail* (27 July 1992).

⁵ Flanagan, 61.

Canadians weren't hoping for the country's break-up but they were prepared to reject constitutional reform in the knowledge that secession could result. In an essay explaining the failure of the Meech Lake Accord, Simeon writes that "a significant number of citizens – perhaps greater than before – seemed prepared to accept the idea of a Canada of which Quebec was no longer a part," a factor, he maintains, that explains why much of the country was prepared to kill the agreement.⁶ Simeon doesn't account for how many Canadians were of this mindset, but we can be guided on that question by polling figures from the time. Looking, for instance, to polling results from June 1990, as the debate over Meech Lake neared conclusion, we see that Canadians outside Quebec were evenly split on whether the agreement should pass – 44 percent were in favour, 41 percent were opposed. These figures seem to provide an indication of the percentage of Canadians outside Quebec prepared, in Harper's words, to risk calling the separatist bluff. Canadians, it's true, couldn't be sure that rejecting Meech Lake would lead to Quebec secession, but neither were they sure it wouldn't, and still they were prepared in large numbers to reject the agreement. The same can be said for the Charlottetown Accord, presented by federalist leaders as a national unity cure but rejected by a majority of Canadians outside Quebec, including more than 60 percent in western Canada. Like the Reform Party, these Canadians were saying no to Plan A, leaving Quebecers only one alternative to the constitutional status quo.

Simeon's suggestion, shared also by other academics, that the constitutional failures under Mulroney were attributable in part to the willingness among Canadians to let Quebec go is an indication of the relationship between rejecting constitutional change and confronting Quebec secession, the latter being the pre-requisite to Plan B.⁷ It's true, of course, that support for Plan A and Plan B could go hand-in-hand – I've mentioned Cameron and Monahan as Plan B academics who supported Meech, and the same goes for the Chrétien government in the early months of Stéphane Dion's tenure – but generally speaking the rejection of Meech Lake and the pursuit of Plan B derived from the same hardened attitude to the nationalist demands from Quebec. Just as Quebec

⁶ Simeon, "Why Did the Meech Lake Accord Fail?" in Ronald L. Watts and Douglas M. Brown, eds., in *Canada: The State of the Federation, 1990* (Kingston: Institute of Intergovernmental Relations, 1990), 36.

⁷ See Gagnon, 113; and Gibbins, "Letting Quebec Go: Would it Matter to Alberta?" *Uni.ca* [Online] (April 1988). Available: <http://www.uni.ca/gibbins.html>

nationalism manifested itself in both the push for constitutional reform and in separatism, the opposition to the demands of Quebec nationalists were evident in a hard line on both the constitutional accommodation of Quebec and on Quebec separatism. If Canadians were prepared to take a tough stance on Quebec's demands for change within Canada, they were also, not surprisingly, prepared to take a tough stance toward a seceding Quebec. The message was that the constitutional era was over, and that Quebecers would have to decide, as Manning had put it earlier, whether they could accept the principles on which Canadian federalism was based. If they couldn't accept Canada, they were free to leave, but there was to be no accommodation in the meantime.

Thus, by the time the Reform Party arrived as the leading federalist opposition party in Parliament after the 1993 election, the party had helped remove the constitutional option from Quebecers, and together with the governing Liberals had forged a new consensus, a brief one lasting only through the dying days of the Quebec referendum campaign, on the need to accept the constitutional status quo. With the existing Canada thus providing one clear option for Quebecers, the Reform Party turned its attention to clarifying what the party regarded as Quebec's only constitutional alternative – secession.

The first important effort by Reform to clarify the rules of secession came in an open letter from Preston Manning to Jean Chrétien on June 8, 1994. With the provincial election looming in Quebec and the PQ promising an early referendum if elected, Manning wrote of a “widespread concern that a vacuum has developed on the national unity front, and that the separatists are filling the vacuum by defining the terms of the debate.”⁸ He therefore urged the Chrétien government to clarify a series of issues. Would Canadian passports, Manning asked, be granted to citizens of a foreign Quebec? Would Quebec be able to use the Canadian dollar? Who would negotiate on behalf of the rest of Canada? What about the national debt, or an independent Quebec's borders?⁹

As became the custom leading up to the 1995 referendum, however, the prime minister offered no response to Reform's call for clarity.¹⁰ Convinced that the referendum would result in a decisive victory for federalism, the Chrétien government refused to be

⁸ Robert Mason Lee, “Reform was alone in asking tough Quebec questions,” *Globe and Mail* (21 October 1995).

⁹ Ibid.

¹⁰ Ibid.

drawn into a discussion on how secession would occur, and even defended the legitimacy of the process initiated by the PQ government. In the summer of 1995, Guy Bertrand, a Quebec lawyer who had converted from separatism to federalism, went to court in an effort to have secession and the upcoming referendum declared illegal, and he invited the federal government to join him. In an August letter from Justice Minister Allan Rock, however, the government rejected Bertrand's request to join the lawsuit, stating that the referendum was a political rather than a legal matter, and that "[t]he true question is not how separation will eventually be carried out, but if Quebecers still want to be part of Canada."¹¹ It was a position no different from that of Quebec separatists. Even when the judge in the case ruled unilateral secession, as contemplated by the PQ in its referendum legislation, illegal – while still allowing the vote itself to proceed – Quebec Liberal leader Daniel Johnson announced the decision would have no effect on the federalist campaign.¹²

Like Bertrand, the Reform Party had also urged the Chrétien government to declare the PQ referendum plans illegal. In December 1994, Quebec Premier Jacques Parizeau unveiled a draft bill on sovereignty that asserted Quebec's right to unilateral secession and contained a number of guarantees for an independent Quebec, including the preservation of Quebec's borders, the use of Canadian currency, and participation in international treaties and trade agreements to which Canada was a signatory, including the North American Free Trade Agreement. Because the legislation intruded on areas of federal jurisdiction, Manning and Harper pressed the government to declare the draft bill illegal, and to deliver the message that no guarantees existed for an independent Quebec because everything would have to be negotiated.¹³ "I think Mr. Parizeau's game," Harper told the press, "is to assert right now that the government of Quebec has the power to do whatever it wants and the government of Canada has no power to block anything or have any say. That's the part the federal government should be challenging."¹⁴

¹¹ "Lawyer urges Ottawa to join court challenge of separatists," *Globe and Mail* (28 March 1996); Greenspon and Anne McIlroy, "Chrétien uses stick to even the odds," *Globe and Mail* (14 May 1996).

¹² David Schneiderman, "Introduction," in Schneiderman, ed., *The Quebec Decision: Perspectives on the Supreme Court Ruling on Secession* (Toronto: James Lorimer and Company, 1999); Feaver, 54.

¹³ Manning and Harper, *Debates of the House of Commons* (6 December 1994), 8696-7.

¹⁴ "Parizeau assuming too much, federalists argue," *Globe and Mail* (7 December 1994).

The separatist forces managed to define the terms of the debate even further with their decision in the spring of 1995 to scrap the original referendum bill, which despite the concerns raised by the Reform Party had at least contained a relatively clear question on separation, for a new bill that contained the same guarantees on independence but with a referendum question emphasizing continued ties with Canada.¹⁵ The question presented to Quebecers on referendum day was:

Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new Economic and Political Partnership, within the scope of the Bill respecting the future of Quebec and of the agreement signed on June 12, 1995?

Not only did the referendum question seem to require the reading of two separate documents, a legislative bill and a political agreement signed by the leaders of Quebec's three separatist parties, it was further clouded by allusions to an ongoing partnership between Canada and a sovereign Quebec. With this question, and the campaign the Yes side was able to build around it, the Reform Party's warnings of a national unity vacuum being filled by separatists came to be realized. After replacing Parizeau as head of the Yes campaign in early October, Lucien Bouchard proved particularly adept at casting the debate in a manner favourable to the Yes side; as Greenspon and Wilson-Smith write,

Bouchard turned the debate to the emotionally satisfying terrain of "partnership." You can have it all, a sovereign Quebec with a stake in Canada, he told audiences.... The existing Yes ads, which sometimes seemed more federalist than those of the No side, were in sync with the new message. While the No side downplayed mention of Canada's national symbols, one of the most widely used print ads for the Yes featured the Canadian loonie – which, the Yes side promised, Quebecers could keep when Quebec became a sovereign state linked with its Canadian partner.¹⁶

With this, the Plan B hope for a clear referendum question with no guarantees on Quebec independence was becoming a lost cause.

Once the question had been set and the Chrétien government refused to challenge the legitimacy of the referendum, the only hope the Reform Party clung to was to have the Chrétien government effectively ignore the actual question and frame the issue to Quebecers as a clear choice on secession, with a simple majority required to separate. In

¹⁵ Feaver, 59.

¹⁶ Greenspon and Wilson-Smith, 311.

the House of Commons on September 18, Manning asked, “Will the prime minister make clear that a Yes vote means Quebec is on its way out, that a No vote means Quebec is in the federation for the long haul, and that 50 percent plus one is the dividing line?”¹⁷ In attempting to force clarity at every point in the process, Reform was sticking by its Quebec policy as it had been outlined since the days of Meech Lake; as an analysis in the *Globe and Mail* put it, the Reform “constituency is tired of the Quebec question and wants it settled once and for all. Quebec must decide, as Reformers have said this week, whether it is in or out.”¹⁸

This made for an important contrast with the Liberal Party. The chief purpose to Plan B from Reform’s standpoint was to achieve clarity – clear rules on secession, and a clear and final choice by Quebecers. It’s true that Reform understood that a hard line on secession could make the separatist option less attractive to Quebecers, an understanding evident, for example, in Harper’s blunt referendum message to Quebec: “Yes, we’ll deal, but you’ll lose.”¹⁹ But the unity component of Plan B was almost a beneficial by-product of the more fundamental interest in settling the question for good. “We’ll deal,” was the first part of Harper’s message, and it was the message Reform delivered all along; even with a thin majority to the 1995 referendum question, the party was prepared to deal. Reform wasn’t putting up barriers.

The federal Liberals, on the other hand, were guided solely by an interest in unity. If clarity was to get in the way of unity, then the Liberals preferred ambiguity. Faced with Manning’s question on whether a simple majority was the dividing line between unity and secession, Chrétien responded, “They [Quebec separatists] want me, on behalf of all Canadians, to say that with a clouded question like that, with one vote, I will help them to destroy Canada. You might. I will not, Mr. Manning.”²⁰ It was the one point of contention between the Liberals and Reform during this period in which the Liberals took the harder line on Quebec separatism. By ruling out a bare majority as grounds for secession, and suggesting the need for a clear referendum question, Chrétien was playing hardball, and doing what it took to prevent Quebec separatists from achieving their goal.

¹⁷ Manning, *Debates of the House of Commons* (18 Sept 1995), 14530.

¹⁸ Greenspon and Tu Thanh Ha, “New reality baffles Chrétien,” *Globe and Mail* (20 September 1995).

¹⁹ “Reform sets out secession conditions,” *Globe and Mail* (1 December 1995).

²⁰ “PM hints at refusal to offer co-operation,” *Globe and Mail* (19 September 1995).

As the scene shifted to the post-referendum era, and as ownership over the rules of secession transferred from the Reform Party to Quebec federalists determined to remain in Canada, and eventually to Jean Chrétien and Stéphane Dion, Plan B would undergo a change as well, becoming for the first time a full-fledged strategy for national unity.

The Post-Referendum Emergence of Plan B

If the federalists had polls from late in the referendum campaign indicating that constitutional reform was the key to keeping Quebec in Canada, there was another poll that allowed for a different interpretation on how to achieve unity. A Léger & Léger poll conducted in the final week of the campaign indicated that among those intending to vote Yes in the referendum, 80 percent believed a “sovereign” Quebec would keep the Canadian dollar, 90 percent believed Quebec’s economic ties with Canada would remain unchanged, 55 percent believed Quebecers would retain their Canadian passport, and 25 percent believed Quebec would continue to send MPs to Ottawa.²¹ Widely publicized in the days and weeks following the referendum, and even cited five years later in Stéphane Dion’s parliamentary address on the Clarity Bill, the poll defined the problem many federalists had come to identify: the separatists, facing no opposition from federalist leaders over the rules of secession, had been allowed to define the rules to their own advantage, and had nearly won the referendum as a result.

The federalist referendum experience, therefore, almost in itself produced the vision of a Plan B unity strategy, and with Lucien Bouchard promising another referendum in the near future, Plan B provided a way for federalists to move forward to the next showdown.²² Not all were buying into it, though, and in the initial months following the referendum, the Chrétien government, committed now to a Meech Lake agenda, steered clear of Plan B. As before, then, it was the Reform Party that took the lead in pushing Plan B in the early post-referendum period, though this time with a crucial contribution from federalists in Quebec.

By the end of November, the Reform Party had prepared, under Stephen Harper’s guidance, a comprehensive policy on the terms of Quebec secession, a policy described

²¹ Feaver, 59.

²² Kennedy.

by the *Canadian Press* as “tough bargaining guidelines in case the separatists win.”²³ To the Reform Party, these rules were indeed tough but they were also considered realistic; the document itself was entitled “20 Realities of Secession.” Challenging the claims of Quebec separatists on a host of issues, the Reform policy was tough only because it made clear that Quebecers would be offered no favours during negotiations on the break-up of Canada: “In any negotiations, the Canadian government would negotiate terms and conditions ... that are in Canada’s interests,” the party declared.²⁴

So, for instance, Quebecers would be entitled to continue using the Canadian dollar, but monetary policy would be set by Canada, for Canada; the Canadian government would be willing to veto Quebec’s participation in any international trade deal, including NAFTA; Quebec would have to assume a quarter of the national debt, far more than the 17.5 percent envisioned by Quebec’s Bélanger-Campeau commission; and though Canada would push for portability of pension benefits, the failure to reach a deal would force the Canadian government to cease all payments to citizens of Quebec.²⁵ And as for citizenship, Reform declared, “All persons choosing Quebec citizenship would be required to surrender Canadian passports, since they would no longer be citizens of Canada.” In other words, a Yes vote really would mean having to choose between Canada and Quebec; there was to be no partnership arrangement, no joint citizenship.

Finally, the Reform Party supported partitioning Quebec in the event of separation: “The government of Canada would be bound to recognize the right of citizenship for people in regions choosing to remain Canadian. Referendums to decide this question would need to be held in the smallest possible potential jurisdiction.”²⁶ This policy of carving up a seceding Quebec was particularly controversial, and challenged the claim not only of Quebec separatists but of the Quebec Liberal Party that Quebec’s borders were inviolable. In fact, because many in Quebec took such a position, Harper warned Quebecers that secession could well produce violence, since the Quebec

²³ “Reform on Quebec: Prepare for violence,” *Canadian Press* (2 December 1995).

²⁴ “Reform sets out secession conditions,” *Globe and Mail* (1 December 1995).

²⁵ *Ibid.*

²⁶ *Ibid.*

government “would have to impose an illegal regime on those citizens [who] won’t separate voluntarily.”²⁷

Following the referendum, Jean Chrétien had hinted that he too was ready to take a tougher line on Quebec separatism, telling a Toronto audience on November 1 that Canadians have allowed two referendums on separation and “we cannot carry it on forever.”²⁸ But as the weeks wore on, and as the Reform Party pushed its hardline policies on Quebec secession, the Chrétien government gave no indication that it was prepared to adopt a similar Plan B course. Marcel Massé, Dion’s predecessor as intergovernmental affairs minister, rebuffed Reform’s call for federal rules on secession, stating, “We have won the referendum, not lost it, and the best way is to deal with the problems that presently exist, not to start planning for the worst.”²⁹ Similarly, Paul Martin commented, “I’m not sure it’s the right strategy, if you believe in this country as we do, to begin to lay down conditions on an eventual separation,” and he labelled Reform’s Plan B “alarmist.”³⁰

This refusal by the Liberal government to adopt a Plan B policy in the early months after the 1995 referendum was creating a new national unity vacuum. Believing the federal government had abdicated its responsibility to defend Canada during the referendum campaign, and seeing little action taken by the government after the vote, federalists from outside the Chrétien government began to take action of their own. The Reform Party, of course, was doing this in Parliament, but the push for Plan B was also taking place on the ground in Quebec. In the months after the referendum, federalist Quebecers who were determined to remain in Canada – specifically the partitionists and Guy Bertrand – made fundamental contributions to the development of Plan B.

During the 1995 referendum campaign, the partition question received scant attention. To the extent the issue was discussed, it was in relation to the referendums held by the Cree and Inuit population of northern Quebec, each of which resulted in a 96 percent vote to remain in Canada.³¹ The federal government, however, made no

²⁷ “Reform on Quebec: Prepare for violence,” *Canadian Press* (2 December 1995).

²⁸ Greenspon and Wilson-Smith, 336.

²⁹ “Reform sets out secession conditions,” *Globe and Mail* (1 December 1995).

³⁰ “Reform on Quebec: Prepare for violence,” *Canadian Press* (2 December 1995).

³¹ Jill Wherrett, “Aboriginal Peoples and the 1995 Quebec Referendum” (Ottawa: Library of Parliament, Research Branch, Political and Social Affairs Division (February 1996).

substantial effort to support the right of aboriginal groups, or any other Quebecers, to remain in Canada following a Yes vote.³² Unwilling to propose any plan for a seceding Quebec in the 1995 campaign, the federal government certainly wasn't prepared to challenge the consensus over Quebec's borders that existed within provincial politics, and generally the referendum campaign proceeded on the understanding that separation would involve the whole province.

Spooked by the near Yes vote on October 30, however, groups of mostly anglophone citizens in Quebec began demanding the right for all federalist regions to remain in Canada in the event Quebec became an independent country. The movement began in the west end of Montreal in the months following the referendum, but quickly spread to the Eastern Townships and the Outaouais region through the efforts of citizen groups that were springing up in one municipality after another.³³ Organized to some extent by members of the provincial Equality Party and other English-rights advocates like William Johnson, then a columnist for the *Montreal Gazette*, the partition movement envisioned a post-secession Quebec in which large tracts of territory remained Canadian – the south shore of the St. Lawrence, the western half of the Island of Montreal, the Outaouais, and the territories of northern Quebec.³⁴ And that's a simple version; other possibilities involved a riding-by-riding, or poll-by-poll, division of Quebec.³⁵

Whatever the details, the partitionist vision posed a serious threat to the viability of the separatist project, which was exactly the intention. As an actual plan for a post-Yes Quebec, partition is complicated and fraught with danger, but that's what made it a useful strategy in pursuing the central goal of most partitionists, which was to ensure that Quebecers wouldn't vote to separate in the first place. Diane Francis, a *Financial Post* columnist who became involved with the partition movement and later wrote a book on the subject, described partition as "a brilliant idea and an incredible weapon to use against the separatists.... Partition called their bluff using their own logic. Canada was

³² Ibid.

³³ Sandro Contenta, "Dividing Quebec once favoured only by 'weirdos'," *Toronto Star* (3 February 1996); Paul Gessell, "Partitionists: A short history," *Ottawa Citizen* (12 February 1996).

³⁴ Philip Preville, "Million Dollar Bill," *Montreal Mirror* (9 April 1998); Trevor McAlpine, *The Partition Principle: Remapping Quebec after Separation* (Toronto: ECW Press, 1996), 55-6.

³⁵ Contenta.

not divided over the issue of separatism. Quebec was.”³⁶ “The next referendum,” she wrote, “would be about partitioning Quebec, not about resting it away from the rest of Canada.”³⁷ Stephen Scott, a McGill law professor and another partitionist leader, summed up the partitionist view: “Partition is the Quebec nationalist’s worst nightmare, making Quebec independence nearly impossible, practically speaking.”³⁸

The partition movement ushered in the new national unity era of Plan B. Even though the Reform Party was proposing Plan B in the months after the referendum as a way to win the next referendum, the party still emphasized the clarity component to Plan B. Harper, for instance, in discussing Reform’s “20 Realities of Secession,” made sure to mention that “even if it’s not just in our interest, we should communicate to Quebecers accurately ... what we think the actual consequences of separation would be.”³⁹ But with the odd exception of those who indeed wanted to sever parts of Quebec from Canada, partitionists, while also basing their claims on what they regarded as realities of Quebec secession, were motivated exclusively by an interest in defeating separatism, and maintaining a united Canada. As Plan B shifted from a western Canadian movement to a Quebec-based movement, the message wasn’t about letting Quebec go, but about keeping Quebec in.

Because the federal government wouldn’t offer support, partitionists had taken it upon themselves to defend Canadian unity. The same went for Guy Bertrand, who in November 1995 returned to the courts, this time asking that a unilateral declaration of independence (UDI) by Quebec be declared illegal under all circumstances.⁴⁰ Bertrand stated:

Now, the citizens should take in their hands the responsibility to protect this country because the politicians have not. During the campaign, the Liberals didn’t talk about the illegality of trying to separate unilaterally even though my case was victorious. No one talked about that. When you have a government not defending the constitution or protecting the Charter of Rights and the rule of law, that’s the end. That’s what the government is there for.⁴¹

³⁶ Diane Francis, *Fighting for Canada* (Toronto: Key Porter Books, 1996), 77.

³⁷ *Ibid.*, 81.

³⁸ *Ibid.*

³⁹ “Reform sets out secession conditions,” *Globe and Mail* (1 December 1995).

⁴⁰ “Unity panel formed to draft changes,” *Globe and Mail* (8 November 1995); “Lawyer says referendum not legal,” *Winnipeg Free Press* (9 January 1996); “Lawyer urges Ottawa to join court challenge of separatists,” *Globe and Mail* (28 March 1996).

⁴¹ Francis, 87.

Because the government wasn't there, Bertrand was in court himself, arguing that unilateral secession was illegal under both international law and the Canadian constitution; that secession could only occur within the framework of the Canadian constitution, which would require Quebec to negotiate separation with Ottawa and the other provinces.⁴² Bertrand again invited the federal government to join his case, but with no indication by the early months of 1996 that Ottawa would come aboard, he was prepared to go it alone.⁴³ Patrick Monahan, who assisted Bertrand in his case, saw Bertrand on a solitary mission: "This," he declared, "is the man who is going to save Canada."⁴⁴

But Bertrand himself had participated in an evening rally at McGill University on January 21 that perhaps marked a turning point in the battle against separatism, triggering events that would eventually see the federal government join the legal case against secession.⁴⁵ Speaking at the rally, in addition to Bertrand, were some of the prominent voices of partition, including William Johnson, Stephen Scott, and Equality Party leader Keith Henderson.⁴⁶ Before an audience of four hundred, with another seven hundred having been turned away for lack of space, the series of speakers took turns challenging the various claims of Quebec separatists. With the two hour event carried live on French television, the speakers had an even wider audience than those in the hall, and one important viewer, jet lagged after a trip to Asia, watched the entire event from his home at 24 Sussex Drive. Francis writes of the prime minister's reaction, "The arguments about the rule of law and partition sank in. He called William Johnson after the rally to personally tell him so."⁴⁷ Within a week of the McGill rally, Jean Chrétien announced his support for partition, and Plan B became government policy.

Choosing Plan B

Given what has transpired since Stéphane Dion joined the federal cabinet on January 25, 1996 – the hard line on secession, the minister's ongoing feud with Quebec separatists –

⁴² "Ottawa ponders joining referendum suit," *Globe and Mail* (3 May 1996).

⁴³ "Lawyer urges Ottawa to join court challenge of separatists," *Globe and Mail* (28 March 1996).

⁴⁴ Fraser, "Flamboyant federalist has his day in court," *Globe and Mail* (19 February 1998).

⁴⁵ Francis, 87; McAlpine, 11.

⁴⁶ Francis, 88.

⁴⁷ *Ibid.*, 91.

it can be forgotten that his arrival in Ottawa was at the time interpreted as a sign of the Chrétien government's new accommodationist position on Quebec. The *Toronto Star*, reporting on the cabinet shuffle that brought Dion to his post as intergovernmental affairs minister, commented, "It was Dion who attracted most of the media attention yesterday because his appointment amounts to a prime ministerial promise to seek a more-than-symbolic recognition of Quebec as a distinct society in the Canadian constitution."⁴⁸ Dion even took the unusual step of marking his appointment by issuing a two-page declaration of his position on national unity, which was devoted strictly to Plan A reforms, and included a clear commitment to the constitutional recognition of "Quebec's distinctiveness."⁴⁹ Chrétien let it be known Dion's views now represented government policy, and announced, "Today we turn the page to a new chapter."⁵⁰

And, indeed, there were reasons to view Dion's arrival as representing a new accommodationist approach to Quebec, quite apart from his two-page manifesto. As a political science professor at the Université de Montréal until his appointment to the federal cabinet, Dion had left a paper trail of political views, and his support for Meech Lake was well-established. Simpson described one particular speech that Dion delivered in early 1995 targeting Pierre Trudeau:

To those – such as Mr. Trudeau by inference – who insist that nationalism inevitably leads to intolerance, Mr. Dion said, "Nationalism is not bad in itself and can perhaps be a positive factor in social solidarity." He added that because of the defeat of the Meech Lake Accord, a defeat to which Mr. Trudeau contributed, "Mr. Trudeau's star has terribly paled, and his constitutional work – previously relatively accepted – has become a kick in the head for a large segment of public opinion."⁵¹

This criticism could easily have been levelled at Jean Chrétien as well, for he too had fought against Meech. Which is to say, then, that the new minister represented a break with Liberal national unity policy as it had been practised under both Trudeau and Chrétien. On the central constitutional question of the last decade, the Meech Lake Accord, Dion was clearly at odds with the Trudeau-Chrétien line.

⁴⁸ "PM calls on newcomer to help fight separatists," *Toronto Star* (26 January 1996).

⁴⁹ Stéphane Dion, "Regaining Confidence in Canada," *Toronto Star* (26 January 1996).

⁵⁰ "PM calls on newcomer to help fight separatists," *Toronto Star* (26 January 1996); Greenspon and Wilson-Smith, 360.

⁵¹ Simpson, "Dion now point man in unity fight," *Globe and Mail* (27 January 1996).

In other respects, however, Dion seemed the natural heir to Trudeau and Chrétien, a rigid opponent of Quebec separatism willing to bear any burden, pay any price, to defeat it. Greenspon and Wilson-Smith describe how Chrétien first took notice of Dion:

During the referendum campaign, both Chrétien and his wife had watched Dion's debates and commentaries on television. "I said this guy is not a timid guy," Chrétien recalled. "You know, he was defending Canada very well, and there was not this ambiguity that we see in so many people in Quebec. It did not exist in him. He knew exactly what he wanted."⁵²

Though a supporter of nationalist demands for change within Canada, Dion was uncompromising in his opposition to the separatist movement. In fact, despite his support for distinct society, Dion had urged federalists during the 1995 referendum to ignore the constitutional question altogether in order to focus on the perils of secession.⁵³ The key to defeating separatism, Dion had determined, was to keep the separatists on the defensive, and it was a message that appealed to Chrétien's instincts.

Indeed, even in pursuing distinct society, Chrétien and Dion wanted to put Lucien Bouchard, newly sworn in as premier of Quebec, on the defensive. The Chrétien government had already passed, in the days following the referendum, a resolution recognizing Quebec as a distinct society and another pledging that the federal government would not agree to any constitutional amendments affecting Quebec without the province's consent. This had gone some way toward satisfying Chrétien's promises made at Verdun, but for recognition of Quebec's distinctiveness to have any legal effect – and perhaps to gain any appreciation among Quebecers – a constitutional amendment was required, which itself required Ottawa to get the support of seven provinces constituting 50 percent of the population. Chrétien and Dion hatched a plan, therefore, to get six provinces on board – to hope for more was too much – and to then take the proposal to Bouchard, whose approval would be enough to ratify the amendment. Chrétien and Dion didn't necessarily expect Bouchard to sign on, but that was considered fine – they could then portray Bouchard as the obstacle to reform.⁵⁴

In trying to achieve support for distinct society, Dion had hoped to capitalize on a sense of urgency. "The country is in danger," he had told reporters the day he joined

⁵² Greenspon and Wilson-Smith, 354-5.

⁵³ Simpson, "Dion now point man in unity fight."

cabinet. “We are in a crisis, an exceptional situation, and when people say ‘I want to think about something else’ I understand the person. I understand the person. I would like to think of something else, but we cannot. The result would be disaster.”⁵⁵ Throughout his first months in office, then, Dion travelled the country earnestly selling distinct society to the rest of Canada. He even remarked at one point that he was seeking not just to convince Canadians to accept distinct society for Quebec, but to want it for Quebec.⁵⁶ But he didn’t get either.

If Dion, or Chrétien for that matter, had failed to learn the lessons of Meech and Charlottetown, Lucien Bouchard hadn’t missed out; reacting to Dion’s appointment and his interest in constitutional change, Bouchard remarked, “He’s due for a shock, that’s for sure. A big shock, because he will discover that most people will not listen to him – that they will say no to everything he will try to bring forth.”⁵⁷ And such was the case as far as distinct society went. Though John Trent has noted popular support for distinct society did increase in response to the referendum, reaching “nearly 40 percent” among Canadians outside Quebec, a solid majority still opposed the concept.⁵⁸ A poll conducted for the *Globe and Mail* immediately following the referendum found that 58 percent of Canadians outside Quebec were opposed to distinct society.⁵⁹ A year later, another poll asked Canadians outside Quebec whether they would support distinct society if it meant keeping Quebec in Canada, and even to this question a majority said no.⁶⁰ More

⁵⁴ Greenspon and Wilson-Smith, 337.

⁵⁵ “PM calls on newcomer to help fight separatists,” *Toronto Star* (26 January 1996).

⁵⁶ Anne McIlroy, “Stéphane Dion: Assignment: Save Canada,” *Globe and Mail* (8 June 1996).

⁵⁷ “New cabinet shows unity strategy shift,” *Globe and Mail* (26 January 1996).

⁵⁸ Even this figure was reached by redistributing the undecideds. John E. Trent, “Trying to Understand Distinct Society,” *Uni.ca* [Online]. Available: <http://www.uni.ca/distsoc.html>

⁵⁹ The Environics poll was conducted November 3-10. Cited in Brian O’Neal, “Distinct Society: Origins, Interpretations, Implications” (Ottawa: Library of Parliament, Research Branch, Political and Social Affairs Division (December 1995).

⁶⁰ This was an Environics poll conducted in November 1996, using a sampling of 2015 Canadians. The strongest opposition to distinct society was in the prairie provinces, where nearly two-thirds rejected it (64 percent in Alberta, 63 percent in Saskatchewan, and 66 percent in Manitoba). In British Columbia, 52 percent were opposed. The only regions where less than half the respondents indicated opposition were Ontario and the Atlantic provinces, though more were still opposed to distinct society than in favour: 48 percent of Ontarians were opposed, with 36 percent in favour; in Atlantic Canada, 45 percent were opposed, with 33 percent in favour. Overall, 52 percent of Canadians outside Quebec opposed distinct society. Michael Jenkinson, “English Canada has turned against Quebec appeasement,” *Alberta Report* (30 December 1996).

importantly, perhaps, the premiers also refused to go along with Dion.⁶¹ Having seen a number of their colleagues and predecessors lose their jobs almost as a direct consequence of Meech Lake, the premiers were siding this time with the public, and against distinct society.

When it became clear to Dion in mid-April that there would be no persuading the premiers, he and Chrétien – perhaps they had learned from Meech – gently backed away. The minister who in late January had spoken of a national unity crisis and of imminent disaster if nothing were done, now commented, “I don’t want to rush too fast,” and said constitutional change was “not the priority now.”⁶² Dion acknowledged he had encountered difficulties in persuading others of his case, but still tried to suggest the setback was temporary, that in time he would achieve his goal. In reality, though, distinct society was finished. It was time for a different approach.

Months earlier, in the wake of the Quebec referendum, Stephen Harper had commented that the prime minister knew better than to equate national unity with constitutional change, and had told the House of Commons, “In terms of the government’s nascent constitutional agenda, I think they would be advised to pursue unity by pursuing those issues on which Canadians agree and not those issues on which they are divided.”⁶³ In these statements, Harper had the key to what became, in 1996, the Chrétien-Dion Plan B unity strategy.⁶⁴ If anything had become clear by the end of the Mulroney years, it was the impossibility of working out a new constitutional deal between Quebec and the rest of Canada, quite simply because distinct society was the deal-breaker. Distinct society, in the aftermath of Meech, provided a *sine qua non* for the Quebec government in constitutional negotiations; outside Quebec, as the post-referendum experience made all the more apparent, it was a non-starter. There could be no reconciling these positions, and, indeed, far from achieving national unity, any effort to produce a constitutional deal threatened to divide the country, pitting Quebec once

⁶¹ “Dion meets Manitoba premier,” *Toronto Star* (11 April 1996); Rosemary Speirs, “Chrétien backs down on vows,” *Toronto Star* (15 April 1996); Greenspon and Wilson-Smith, 337-8.

⁶² Speirs.

⁶³ “Rift deepens between Reform, Liberals,” *Globe and Mail* (3 November 1995).

⁶⁴ Chantal Hébert has credited Harper as the originator of Plan B, writing, “If one were to trace the federal clarity law on Quebec secession back to its true origins, the exercise would lead straight to Stephen Harper.... In the matter of his government’s main initiative on the unity front, Prime Minister Jean Chrétien

more against the rest of Canada. In contrast, Plan B was a strategy capable of garnering widespread support in Canada, offering the federal government the chance to forge a national unity coalition between federalist Quebec and the rest of Canada for the first time since patriation. As Harper suggested, a Plan B unity strategy avoided the error of linking constitutional reform with national unity, and it pursued unity on principles supported by the vast majority of Canadians.

This isn't to suggest, of course, that Plan B was unanimously supported or risk-free; indeed, it was the opposition to Plan B within Quebec that held the potential for a backlash and for an accompanying increase in separatist support. Patrick Monahan, who in the aftermath of the 1995 referendum emerged as the leading advocate of Plan B in Canadian academia, dealt with this concern in a 1996 essay, "Coming to Terms with Plan B":

Doubtless, any open discussion of the process governing secession could backfire easily. Yet the question is not whether such a discussion is risky but, rather, whether any alternative strategy appears more attractive. The main alternative – a continuing refusal to contemplate the rules of secession – was the centrepiece of the referendum campaigns in 1980 and 1995. The results on October 30 conclusively demonstrated that this strategy no longer makes sense. Its main by-products have been confusion and disorder in the federalist camp, while giving sovereigntists a free hand in defining the rules of the game to their own advantage.⁶⁵

The 1995 referendum was in this way a transformative event, demonstrating to federalists that whatever the risk involved in confronting separatists over the rules of secessions, the risk of doing nothing could be far greater. It was an analysis Jean Chrétien had come to accept, and his support for Plan B now aligned him with pre-referendum believers like Manning, Harper, and Dion.

Though it wasn't until the collapse of the Chrétien-Dion constitutional initiative in the spring of 1996 that Plan B became the complete embodiment of the federal government's unity strategy, the policy was nevertheless in place within days of Dion's arrival in the Chrétien cabinet. First up was partition, probably the most contentious Plan B issue of all.

is merely a foster parent to Harper's love child." Hébert, "Quebec issue could sink united right," *Toronto Star* (27 July 2002).

⁶⁵ Monahan, Michael J. Bryant, and Nancy C. Côté, "Coming to Terms with Plan B," in David Cameron, ed., *The Referendum Papers: Essays on Secession and National Unity* (Toronto: University of Toronto Press, 1999), 244-322, 246.

Most prominent voices in Quebec opposed all talk of it.⁶⁶ In response to the unity rally held at McGill, Alain Dubuc of *La Presse* had described the supporters of partition as “weirdos,” a statement he defended the following month:

You may think I exaggerate when I speak of weirdos in respect to the tribunes of the partition of Quebec. But what is the proper term for those people who propose the creation of an enclave around Montreal, the creation of corridors, the danger of ethnic cleansing? Isn't this barbarous? We must show great vigilance and the utmost severity toward such trends when they crop up.⁶⁷

The francophone press, as well as the English-language *Montreal Gazette*, generally shared Dubuc's assessment.⁶⁸ So, too, did the politicians. Daniel Johnson and members of his provincial caucus rejected the concept, a position supported by Premier Bouchard, who warned Ottawa that to endorse partition “would be such a provocation that the political landscape will be in a very turbulent mood.”⁶⁹ Lucienne Robillard, a prominent federal cabinet minister from the province, also opposed partition, and her cabinet colleague Paul Martin, who refused to comment on partition on the rationale that he preferred positive national unity solutions, gave every indication that he too opposed federal support for partition.⁷⁰

No one – no one other than the “weirdos” identified by Dubuc, anyway – were willing to support partition. Yet the consensus within Quebec rested on some difficult logic: a view that Canada was divisible but Quebec wasn't. Efforts to justify the position – including Bouchard's remark that “Canada is divisible because Canada is not a real country. There are two people, two nations, and two territories, and this one is ours” – may have been grounded in a genuine theory of Canada, but they were still vulnerable to charges of hypocrisy.⁷¹ Consistency offered two positions: if Quebec is indivisible so too is Canada; or, if Canada is divisible so too is Quebec.

By the end of Dion's first week in office, he and the prime minister committed the federal government to the latter. “If, unfortunately, Quebec had to secede,” Dion

⁶⁶ Contenta.

⁶⁷ Francis, 89; Alain Dubuc, “Federalists have nothing positive to say to Quebec,” *Toronto Star* (24 February 1996).

⁶⁸ Contenta.

⁶⁹ Tu Thanh Ha, “Montreal talk of partition heats up,” *Globe and Mail* (30 January 1996); “Canada can be divided, Quebec can't: Bouchard,” *Toronto Star* (28 January 1996).

⁷⁰ “Quebec can be divided, PM says,” *Toronto Star* (30 January 1996).

⁷¹ “Bouchard says No to partition,” *Montreal Gazette* (28 January 1996).

announced, “it’s very important that this event would come with clear rules.”⁷² The first of these rules was that Quebec’s borders would be up for discussion: “You can’t consider Canada divisible but the territory of Quebec sacred,” he announced. “If there are native groups, municipalities or regional municipalities who on an equally democratic basis decided they wanted to stay Canadian, you would have to talk to those people.”⁷³ “The basic rule,” he asserted, “is that if Canada is divisible, Quebec is as well.”⁷⁴ Chrétien followed Dion’s pronouncements with a declaration of his own: “If Canada is divisible, then Quebec is divisible.... It’s the same logic, the logic of secession.”⁷⁵

To Bouchard, these comments comprised “the worst threat we have ever received from the federal government.”⁷⁶ To Chrétien and Dion, however, there was satisfaction. “Suddenly, people begin to realize that you don’t break up a country that easily,” Chrétien remarked. “It could be messy.”⁷⁷ Dion made similar comments about three weeks later. “The debate in the last few weeks was based on the consequences of secession rather than the advantages of union,” he stated without apology. “Quebecers now know that, contrary to what leaders of the independence movement have always tried to make them believe, there does not exist on the shelves of the United Nations a piece of parchment that protects Quebec territory, but not that of Canada.”⁷⁸ To Dion, the partition debate had been a victory. Polling figures released in the middle of February seemed to support him on this: soft sovereigntists – i.e., those who identified themselves as “probable” Yes voters – were 45 percent less likely to vote Yes simply as a result of hearing about the partition idea.⁷⁹ “The more we explain to people what the consequences

⁷² “Quebec can be divided, PM says,” *Toronto Star* (30 January 1996).

⁷³ Tu Thanh Ha.

⁷⁴ “Use of force to be avoided minister says,” *Toronto Star* (2 February 1996).

⁷⁵ Robert M. Gill, “Plus ça change: Canada and Quebec in the Year Since the 1995 Referendum,” *American Review of Canadian Studies*, v. 26 (Winter 1996), 631-639.

⁷⁶ Contenta.

⁷⁷ Ibid.

⁷⁸ “Dion vocal on carving up Quebec,” *Toronto Star* (19 February 1996).

⁷⁹ Greenspon and McIlroy. A 1997 COMPAS poll contained a similar finding: “that as awareness of the partition idea rises, so does the expectation that partition will take place. And the results also suggest that if Quebecers believe voting Yes will lose them chunks of their province, they are much less likely to vote Yes. ‘The issue of partition benefits the federalist side,’ COMPAS chairman Conrad Winn said.” See “Partition gains acceptance across Canada,” *Kitchener-Waterloo Record* (15 May 1997).

are of different options, the more people will choose Quebec within Canada,” Dion declared.⁸⁰

And it wasn’t just about partition. On January 30, Chrétien said that if the Yes side received a simple majority in a future referendum it would not be enough to separate.⁸¹ He had, as we know, made this point during the 1995 referendum, but there it had been in the context of a “clouded question.” Now Chrétien was asserting – without offering a number himself – that a thin majority was insufficient for breaking up the country, even in response to a clear question.

A clear question. Were there to be another referendum, this is what Ottawa wanted most. In 1995, Chrétien had accepted a campaign based on the question drafted by the PQ because he felt certain he could win on any wording. No such illusions were possible now. Having been drawn into battle in 1995 on a question stressing partnership, and having nearly lost, the Chrétien government was determined to make any future referendum on separation a referendum on separation.

The question was how Ottawa would assert itself. One weapon the federal government has in this regard is the power to disallow provincial laws and, indeed, in the days following the 1995 referendum Justice Minister Rock mused openly about invoking this power to prevent an unclear question in the future.⁸² Once Dion took control of the unity agenda, however, the government settled on a strategy of simply not negotiating separation on the basis of an unclear question. As the *Star* reported on January 30, Rock “said there must be federal standards on the question, the process and maybe even the margin of victory. If they are not met, Ottawa would not respect a Yes vote.”⁸³

The essentials of the Chrétien-Dion Plan B were now in place. Had it taken all of a week-and-a-half? Stéphane Dion joined the Chrétien cabinet in late January 1996. By the first few days in February the federal government had adopted the following positions: that Quebec has the right to separate from Canada; that separation requires negotiations, which would include discussions of borders; and that negotiations would only take place if more than a simple majority of Quebecers answer Yes to a clear

⁸⁰ “Dion vocal on carving up Quebec.”

⁸¹ “PM avoids numbers game on sovereignty,” *Toronto Star* (31 January 1996).

⁸² “Grits quiet on plans for Quebec,” *Winnipeg Free Press* (4 November 1995).

⁸³ “Quebec can be divided, PM says,” *Toronto Star* (30 January 1996).

question on separation. The next four years were spent making these policies the law of the land.

Chapter 3: Towards the Clarity Bill, 1996-2000

Introduction

Days after the 1995 Quebec referendum, in an op-ed piece in the *Globe and Mail*, de Mestral and Cameron argued there was an urgent need for a distinct society amendment to the constitution, and they asked Canadians to ponder a question: “Do we really wish to kill Canada by saving it from special status?”¹ This set the tone for much of what was to come in the academic debate following the 1995 referendum, where national unity continued to be viewed as a constitutional issue. In fact, de Mestral and Cameron, in arguing for distinct society, set the minimum conditions thought necessary to secure national unity peace. As I discussed at the outset of this work, the closeness of the referendum result on October 30, 1995 led many to conclude that wholesale constitutional changes were needed to save Canada, and until very recently, much of the national unity literature was devoted to finding such a solution. “The federal status quo cannot hold,” was Gibbins’s assessment in a 1997 essay, and the next year he co-edited a volume of essays entitled *Beyond the Impasse*, the reference being to a constitutional impasse, the purpose of the book to find a way out. As Gibbins wrote, “The *Beyond the Impasse* project emerged from the belief that a durable solution to the national unity dilemma would not be found in minor tinkering with the constitutional and institutional status quo.”² Lest one think this was an argument in favour of the Chrétien-Dion Plan B strategy, an argument, that is, in favour of a durable solution to national unity with no constitutional tinkering at all, the point was made clear: “The project, therefore, was designed to explore a more extensive restructuring of Quebec’s relationship with and within the broader Canadian political community.”³ The idea that Gibbins and other

¹ De Mestral and Cameron.

² Gibbins, “Getting There from Here,” 397.

³ Ibid.

contributors to the volume, such as McRoberts and Laforest, hit upon was partnership.⁴ “Partnership,” Gibbins wrote, “potentially provides a framework that would permit the two national communities to co-exist in a loose but mutually beneficial association.”⁵ He suggested the appeal to such an idea was “the hope that partnership would bring the ‘never-ending toothache’ of the national unity debate to an end.”⁶ Laforest made a similar suggestion in writing, “As long as Lucien Bouchard and Jean Chrétien ... have not begun a dialogue based on the principle of mutual respect and aimed at reaching reciprocal concessions, Quebecers and Canadians will never have peace in their political and constitutional life.”⁷

Even as these ideas were floating about, however, Chrétien and Dion had already discarded any notion of achieving national unity through constitutional reform, and they certainly weren’t looking to deal with Lucien Bouchard. Having adopted Plan B, Chrétien and Dion had embarked on a non-constitutional strategy for securing national unity, and it was a strategy that specifically targeted Quebec separatists including Bouchard.

From a unity standpoint, such a strategy held certain advantages over constitutional reform. First, as mentioned previously, Plan B was a national unity strategy with widespread support in Canada, in direct contrast to a constitutional reform movement that had succeeded only in fomenting division. In this chapter we will see Plan B culminate with the passage of the Clarity Bill, legislation setting out federal rules on secession that was not only supported nationwide but garnered significant support within Quebec. Indeed, despite constant assertions that Plan B would backfire by antagonizing Quebecers and increasing support for separatism, the strategy appealed to a sense of fairness that allowed Ottawa to secure an important base in Quebec.

Moreover, even though it represented a dramatic change from Ottawa’s previous positioning on national unity, Plan B was a strategy about confirming the status quo, making it an easier agenda to pursue than constitutional reform had proven. Instead of addressing the constitution, and opening up that hornet’s nest, Plan B directly addressed secession, seeking to make unattractive the sweeping changes proposed by Quebec

⁴ Ibid.

⁵ Ibid., 409.

⁶ Ibid., 401.

⁷ Laforest, “The Need for Dialogue,” 413.

separatists. And indeed, because Plan B involved no changes to the constitutional order, and involved only the establishment of federal rules on secession, it was a strategy that depended solely on the will of the federal government. Major constitutional change is supposed to be difficult, and in the 1980s and '90s had proven nearly impossible. Plan B, in contrast, could be pursued entirely according to the wishes of Chrétien and Dion. Even the decision to go to court, which involved temporarily relinquishing control over Plan B, was carefully calculated, and was expected by Chrétien and Dion to yield an important victory in the battle against separatism.

The Quebec Secession Reference

From May 1996 to August 1998, Ottawa carried out its fight over the rules of Quebec secession in the courtroom. By one reading, it was a process that changed little: the federal government emerged from the courts with the same Plan B that Chrétien and Dion had established in early 1996. But then, the reason Plan B remained unchanged was because Ottawa won the legal arguments, and that's the point that made a difference: by 1998, Chrétien and Dion had the institutional weight of the country's highest court to back up their whole plan.

It was the battle taking place in Quebec Superior Court between Guy Bertrand and the government of Quebec that provided the federal government an opening to the legal challenge of Quebec secession. As we've seen, Bertrand had returned to court following the 1995 referendum to argue that the unilateral secession of Quebec would constitute a violation of Canadian and international law. The government of Quebec was countering Bertrand's claim by arguing that secession was a political rather than a legal matter; that in the event of a Yes vote to separation, the will of Quebecers must be respected.⁸ To the extent the Quebec government did offer a legal rationale for this position, it depended on international law – a right to self-determination – rather than Canadian law.⁹ It was against this claim that Quebec secession could take place outside

⁸ "Ottawa ponders joining referendum suit," *Globe and Mail* (3 May 1996).

⁹ "Ottawa, Quebec clash again on legal aspect of Yes vote," *Globe and Mail* (7 May 1996).

the Canadian constitution that the federal government chose to intervene in *Bertrand*.¹⁰ As Justice Minister Rock remarked, “When the Attorney-General of Quebec states flatly that the ascension of Quebec to sovereignty is a matter which has nothing to do with our constitution or the courts or the rule of law, I’m afraid we have to take a position.”¹¹

Indeed, having already adopted a Plan B strategy, challenging the claim of the Quebec government regarding the legality of unilateral secession became a virtual necessity for the Chrétien government. The federal government needed to establish that secession requires a negotiated settlement in order to gain the leverage to insist on other Plan B policies as its price for coming to the table – to insist, for instance, on a strong Yes majority to a clear question, or on the right of federalist regions to remain in Canada. The legal argument thus provided an opening to the rest of Plan B, but the legal argument was also viewed by Ottawa as an important unity policy in itself. As Young has written, “Federal strategists believed that if a unilateral secession were held to be illegal, Quebecers might be less likely to vote Yes in any future referendum.”¹² Such a notion, in fact, has found support in the academic literature; as Martin and Nadeau concluded in an analysis of the 1995 referendum, “the perception that sovereignty is illegal acts as a powerful disincentive to even consider it as an option,” or, to put it another way, “judging the sovereignty project legal is nearly a necessary condition for considering the prospect of voting for it.”¹³ The legal question was, in fact, of such vital importance to the Chrétien government that it’s likely the government would have gone to court on its own initiative had Bertrand not already been there.

In any event, the federal government’s journey through the courts did begin with the *Bertrand* case, and it was this case that produced the first federalist victory in August 1996 when the judge in *Bertrand* rejected the Quebec government’s motion to have the suit dismissed as a political matter.¹⁴ This wasn’t an outright defeat for the Quebec government, only a determination that the case would proceed with the purpose of ruling

¹⁰ “Quebec, Ottawa head for showdown,” *Globe and Mail* (11 May 1996); Hugh Winsor, “Federal slingshot may wake Goliath of Quebec anger,” *Globe and Mail* (13 May 1996); Robert A. Young, *The Struggle for Quebec* (Montreal: McGill-Queen’s University Press, 1999), 107.

¹¹ Winsor.

¹² Young, *The Struggle for Quebec*, 106.

¹³ Pierre Martin and Richard Nadeau, “Choosing a Nation: The 1995 Referendum on Sovereignty in Quebec” [Online]. Available: <http://www.fas.umontreal.ca/POL/MartinP/Martin/Nadeau250500.pdf>

¹⁴ “Ottawa sees victory in sovereignty ruling,” *Globe and Mail* (31 August 1996).

whether a UDI was legal.¹⁵ Still, it was a major blow – in ruling the case a matter for the courts, the judge was requiring Quebec to offer a legal justification for its position.¹⁶ Importantly, Bertrand's trip to the courts in 1995 had already produced a verdict that unilateral secession – at least as contemplated in Quebec's 1995 referendum legislation – was contrary to the rule of law.¹⁷ Facing bleak prospects, therefore, the government of Quebec announced it was withdrawing from the court battle over secession, vowing to no longer participate in any legal challenges to what was a political issue.¹⁸

That left the next move up to Ottawa, and in late September Allan Rock announced that the government was referring the matter to the Supreme Court of Canada, which would be asked to rule whether Quebec possessed a right to unilateral secession under either the Canadian constitution or international law.¹⁹ The decision to proceed to the Supreme Court hadn't been the government's only option at this point, even if Ottawa was intent on continuing the legal fight. Bertrand, for instance, was prepared to proceed with his court challenge despite the Quebec government's withdrawal from the case, and Ottawa could have done so as well.²⁰ Going to the Supreme Court, though, appealed to the federal government partly because it allowed Ottawa to disassociate itself from the controversial Bertrand, but more importantly because the government believed that a ruling from the Supreme Court would provide a more authoritative backing of their position than would a ruling from a single judge in Quebec.²¹

This, of course, was based on the Chrétien government's assumption that it would win at the Supreme Court, which itself presented a problem for the justices of that Court. As federal appointees, the Supreme Court justices called upon in the *Secession Reference* were, we can only assume, federalists, believers in Canada wanting to do their part for the unity of the country.²² But they were also expected to fulfill a role as impartial arbiters of

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Monahan, "The Public Policy Role of the Supreme Court of Canada in the Secession Reference," *National Journal of Constitutional Law*, v.11 (1999), 65-105, 104.

¹⁸ "Quebec maintains right to secede," *Globe and Mail* (5 September 1996).

¹⁹ "Ottawa to seek secession ruling," *Globe and Mail* (26 September 1996).

²⁰ "Bertrand continues secession challenge," *Globe and Mail* (20 September 1996).

²¹ Schneiderman, 4; Monahan, "Public Policy Role of the Supreme Court," 104.

²² Some of the justices, in fact, said as much. See the comments of Justices Gonthier, Cory, and Major, as reported in Sean Fine, "Behind the scenes as history was made," *Globe and Mail* (21 August 1998). Justice Major was particularly candid: "I look at any province, and I think, if they left Confederation they'd become such a small country. So many opportunities lost. I have a hard time seeing any province that

the law. From the moment the federal government referred the secession questions to the Supreme Court, this impartiality was under attack by Quebec separatists. Though the Bouchard government stuck by its pledge not to participate in further legal proceedings on secession, which resulted in the Court appointing a separatist lawyer to argue the separatist case, the government made its views on the Supreme Court known; the province's minister of intergovernmental affairs, Jacques Brassard, remarked that the Court was but "the judicial arm of the federal government," and government ads were placed in newspapers describing the Court as the "leaning tower of Pisa of Canadian federalism."²³ Comments such as these were designed to brace Quebecers for a Supreme Court ruling against separatism, and they may even have had a ring of truth. Bzdera, in what he acknowledges is a minority view in the academic literature, has argued that Canada's Supreme Court has indeed tended to favour the federal government over the years, although one of the central examples he cites – the *Patriation Reference* of 1981 – demonstrates certain limits to his theory.²⁴ The Court's ambiguous ruling in that case – that the federal government's plan to patriate the constitution without provincial consent was legal but a violation of constitutional convention – was an effort to find some sort of middle ground between Ottawa and the provinces, which, depending on one's view of the issues involved in the case, can be said to have unfairly favoured either side.²⁵ That said, it's probably fair to regard the *Patriation Reference* decision as a qualified victory for the federal government, which was forced back to the bargaining table with the provinces after the ruling, but arrived holding the hammer. As oral arguments got underway in the *Secession Reference* in February 1998, Peter Russell seemed to expect something similar this time around. "I think these nine will see themselves as having a job of statesmanship to do," was his way of putting it.²⁶ Russell's words implied an interest on the part of the

would be better off on its own. Alberta may have more money, but that's not everything that makes a country. Can you think of another country you'd rather live in, excluding Ottawa winters?"

²³ "Separatists flying high at top court," *Globe and Mail* (17 February 1998); Monahan, "Public Policy Role of the Supreme Court," 67-8.

²⁴ André Bzdera, "Comparative Analysis of Federal High Courts: A Political Theory of Judicial Review," *Canadian Journal of Political Science*, v. 26 (1) (March 1993), 3-29.

²⁵ Bzdera, for instance, suggests that the ruling "irreparably weakened" the provinces' bargaining position. That, though, invites the question – "irreparably weakened" compared to what? Compared to the Trudeau government's assertion that the federal plan was legal, period, then the Court's decision infinitely strengthened the provinces' position. See Bzdera, 12.

²⁶ "Justices face hard questions on legality of secession," *Globe and Mail* (21 February 1998).

justices in serving Canada, tempered by the need to avoid a backlash in Quebec. A qualified victory for the federal government seemed to be in order.

In August 1998, the Supreme Court handed down its unanimous verdict in the *Secession Reference*. Surprisingly, perhaps, the effort to qualify Ottawa's victory in the case didn't come in the Court's ruling on the international law component, thought to be the question on which the federal government might be vulnerable.²⁷ Here, the Court made relatively short work in dismissing the separatist argument, ruling that international law rests on the territorial integrity of states, and that exceptions to this – such as the right to self-determination of colonial or oppressed peoples – do not apply to Quebec.²⁸

It was on the question concerning Quebec's right to unilateral secession under Canada's constitution – thought by most legal scholars to be a cut and dried issue that would be decided in Ottawa's favour – that the Court offered a compromise of sorts between federalist and separatist arguments.²⁹ The Court ruled that Quebec could not unilaterally secede under the Canadian constitution, but added an important qualification: if a "clear majority" of Quebecers voted on a "clear question" to separate from Canada (the meaning of "clear" was, in each instance, to be left to political actors), the rest of Canada would be legally obliged to engage in negotiations on secession.³⁰ These negotiations, the Court stipulated, had to be carried out in good faith, though, importantly, with no requirement that a deal actually be brokered: negotiations are guaranteed but secession is not.³¹ The "good faith" also extended both ways: a seceding Quebec, if others brought the matter to the table, would have to negotiate its borders.³²

Whatever the stipulations attached, though, the finding of a duty to negotiate was a thinly disguised effort by the justices to offer a concession to Quebec separatists. "As a

²⁷ It was on the basis of international law, at any rate, that Quebec separatists considered the federal government most vulnerable. André Joli-Coeur, who argued the separatist case in the *Secession Reference*, focused primarily on international law to justify Quebec's right to unilateral secession, just as the Quebec government had done in the two cases initiated by Guy Bertrand.

²⁸ *Reference re Secession of Quebec* [1998] 2 S.C.R. 217 (S.C.C), paras. 124-7, 131-5; Monahan, "Public Policy Role of the Supreme Court," 101.

²⁹ Monahan discusses the views of legal scholars on this point in "Public Policy Role of the Supreme Court," 73.

³⁰ *Reference re Secession*, paras. 87-8, 92-3.

³¹ *Ibid.*, paras. 96-7.

³² *Ibid.*, para. 139; Monahan, "Public Policy Role of the Supreme Court," 97-100.

matter of strict law,” Hogg has written, “it is not easy to see where the obligation comes from.”³³ The Court itself wrote:

... an act of secession would purport to alter the governance of Canadian territory in a manner which undoubtedly is inconsistent with our current constitutional arrangements. The fact that those changes would be profound, or that they would purport to have a significance with respect to international law, does not negate their nature as constitutional amendments to the constitution of Canada.³⁴

From here, as Monahan has written, it “would seem to follow inexorably” that the answer to the question of Quebec’s right to unilateral secession under Canada’s constitution is a simple no.³⁵ After all, prior to the decision in this case it had never been contended that any province could force the rest of the country to negotiate any constitutional proposal, regardless of the changes proposed, and regardless of any provincial referendum results. Nevertheless, the Court proceeded to argue that, in the event of a clear vote for separation in Quebec, secession negotiations must follow because of certain “unwritten” constitutional principles – respect for the “federalism principle” requires Quebec to negotiate secession with the rest of Canada; respect for the “democracy principle” requires the rest of the country to negotiate with Quebec.³⁶ Such was the legal rationale, though few bought it. “There is no historical basis,” Hogg writes, “for the proposition that a referendum in the province that desires to secede should impose an obligation of co-operation on the other parties to the amending procedures.”³⁷ As Young has written, the finding of an obligation to negotiate was a matter of “the Court sav[ing] its own bacon,” the entire decision “a most politic judgement.”³⁸

³³ Peter Hogg, “The Duty to Negotiate,” *Canada Watch*, v.7, nos. 1-2 (January-February 1999).

³⁴ *Secession Reference*, para. 88.

³⁵ Monahan, “Public Policy Role of the Supreme Court,” 81.

³⁶ *Secession Reference*, paras. 54, 88.

³⁷ Hogg, “The Duty to Negotiate.”

³⁸ Robert A. Young, “A Most Politic Judgement,” *Quebec Decision*, 107-112, 109.

And, indeed, from a political standpoint, the justices produced a masterstroke, their decision garnering the unexpected support of the Bouchard government along with the approval of the Chrétien government. Having derided the Court for months, Bouchard immediately embraced the ruling in the *Secession Reference*, ignoring the less favourable aspects of the judgement in order to focus on the new constitutional obligation to negotiate, which, he claimed, “shakes the foundations of the federalist strategy, and undermines the arguments of fear and of the refusal to negotiate.”³⁹ He announced as well that he expected the Supreme Court ruling to “be helpful ... in the next referendum.”⁴⁰ Despite such words from the Quebec premier, however, Jean Chrétien was untroubled by the obligation to negotiate, which had been government policy from the time Plan B was adopted. Justice Minister Rock had told Parliament in 1996 that “this country will not be held together against the will of Quebecers, clearly expressed,” and in the wake of the *Secession Reference* the prime minister reiterated that “Canadians will never force anyone to stay.”⁴¹ And if untroubled by this aspect of the ruling, the prime minister took satisfaction with the other parts of the decision: the requirement for a clear question and clear majority, support for the partition principle, and the determination that Quebec cannot secede without reaching a deal with the rest of Canada.⁴² The justices of the Supreme Court had given something to each side, and as a way to gain political legitimacy for their ruling, the plan worked.

In fact, so closely aligned were the interests of the Court and the Chrétien government – each wanted unilateral secession declared illegal without provoking a backlash in Quebec – that the finding of an obligation to negotiate, which was central to

³⁹ Bouchard, “Premier Bouchard Reflects on the Ruling,” *The Quebec Decision*, 95-100, 100.

⁴⁰ “Bouchard and PM square off,” *Globe and Mail* (22 August 1998).

⁴¹ Ibid.

⁴² Ibid.

the political victory of the Court, may have equally benefited the Chrétien government. This concession to Quebec separatists, after all, had already been made by the Chrétien government, yet it garnered Lucien Bouchard's support for a Supreme Court judgement endorsing the Plan B agenda. By getting Bouchard's support for the *Secession Reference*, therefore, the justices of the Supreme Court not only maintained their own legitimacy in the eyes of Quebecers, they managed to confer that legitimacy on every component of the Chrétien-Dion Plan B.

The Clarity Bill

From the moment it was adopted by the Chrétien government, Plan B faced heavy criticism from Quebec separatists. Bouchard had reacted angrily to Chrétien and Dion's support for partition, and had continued to harangue the federal government at every turn, describing Ottawa's intervention in the *Bertrand* case as a "very serious gesture" that might warrant a snap election and a new referendum, a threat he repeated when Ottawa took Plan B to the Supreme Court.⁴³ But the opposition to Plan B wasn't limited to Quebec separatists, as prominent federalists, particularly those from Quebec, also fought Chrétien and Dion every step of the way. Jean Charest, federal Conservative leader at the time the Chrétien-Dion Plan B was initiated, criticized the new policy, arguing that "failure is not an option. Rather than contemplate how the country will fail, all our energy and time should be dedicated to finding answers on how we can change things."⁴⁴ The decision to go to the Supreme Court brought similar criticism from Charest, who joined with then-Quebec Liberal leader Daniel Johnson in pleading that Ottawa drop the court proceedings and focus instead on renewed federalism.⁴⁵ Even after the decision of the Supreme Court in the *Secession Reference*, the federal Liberals remained isolated on the question of the requisite majority for separation, with every other party in Parliament and

⁴³ "Ottawa ponders joining referendum suit," *Globe and Mail* (3 May 1996); "'They want a clear question'," *National Post* (14 March 2000). Chrétien told the *National Post*: "When I went to the Supreme Court, Mr. Bouchard threatened me, you remember, with calling an election. He did it privately.... And I said, what would happen? Two things. You will win or lose. If you lose, it's over. If you win, you will remain premier. And I will still be prime minister of Canada. And I will still be at the Supreme Court. And he didn't call an election."

⁴⁴ Young, *The Struggle for Quebec*, 102. The quotation is from January 20, 1996.

⁴⁵ For Charest's view on the Supreme Court reference, see "Ottawa to seek secession ruling," *Globe and Mail* (26 September 1996). For Johnson's view, see "Bertrand continues secession challenge," *Globe and Mail* (20 September 1996).

Quebec's National Assembly continuing to assert that a simple majority was sufficient to break up the country.

But far from dissuading Chrétien and Dion, the widespread opposition among other political leaders to their Plan B agenda convinced them to push forward. As the *Globe and Mail* reported, "Strategists say Prime Minister Jean Chrétien's intuition tells him he can establish clarity on this issue in a way that none of his potential successors, on either side of the House of Commons, could."⁴⁶ In other words, if he didn't do it, who would?

And so the Clarity Bill. Unlike other options available to the government in establishing the rules of secession – a parliamentary resolution or prime ministerial speech – legislation appealed to Chrétien and Dion because it gave a measure of permanence to their unity policy.⁴⁷ Throughout the summer of 1999, therefore, federal officials quietly prepared legislation designed to turn Plan B into law; when Parliament returned for the fall session, the Clarity Bill was set to go.⁴⁸

The legislation stipulates that within thirty days of the release by a province of a referendum question on secession, the House of Commons is to vote on whether the question is clear. Should MPs determine the question is not clear, the federal government would not negotiate secession, whatever the results of the referendum. According to the bill, the House of Commons must reject any referendum question that focuses on a mandate to negotiate secession (as in 1980) or that envisages, in addition to secession, economic or political arrangements with Canada (as in 1980 and 1995). If the House of Commons determines that a referendum question is indeed clear, and a provincial government seeks to negotiate secession following a referendum on the question, then MPs are to vote on whether the referendum majority was clear, taking into consideration factors that include the size of the majority and the percentage of eligible votes cast. If the House of Commons concludes the majority was not clear, then the federal government would not negotiate secession. Finally, the Clarity Bill stipulates that even a clear majority on a clear question is insufficient for a province to separate; secession

⁴⁶ "New poll finds no groundswell for sovereignty," *Globe and Mail* (15 December 1999).

⁴⁷ "Reform leader Preston Manning turned up the heat in the unity debate Wednesday," *Canadian Press* (24 November 1999); "Chrétien referendum strategy no real surprise," *Canadian Press* (5 December 1999); "PM expects thanks for secession legislation," *Toronto Star* (24 December 1999).

requires a negotiated settlement with the federal and provincial governments, and negotiations must include the division of assets and liabilities, the rights of Aboriginal and minority populations, and “any changes” to a province’s borders.

Upon its introduction in December 1999, the Clarity Bill was criticized in certain quarters precisely for its lack of clarity, particularly on the issue of what constitutes a clear majority.⁴⁹ Following the 1995 referendum, Chrétien and others in his government had given indications that their Plan B would eventually include a provision that set the requisite majority needed to separate, the prime minister suggesting as late as the summer of 1999 that he favoured a threshold of 60 percent.⁵⁰ But certain political and legal considerations intervened to convince the Chrétien government otherwise. To start with, the absence of a specific number would allow the federal government to retain flexibility in the event of a majority Yes vote in Quebec. Dion, for example, commented in the days before the Clarity Bill was introduced that even a large majority could be ruled insufficient should the post-referendum period witness an erosion in support for separation.⁵¹ As in 1995, then, the federal strategy was to maintain maximum manoeuvrability by refusing to commit to a number that would lead inexorably to negotiations on secession.⁵² Another political consideration may have been the concern expressed by federalists from time to time that to adopt a specific figure of, say, 60 percent could backfire by making a thin majority more likely; as Stephen Harper wrote in a 1999 column, “Anything that allows the Québécois to believe they can vote by a

⁴⁸ “Ottawa plots referendum strategy,” *Globe and Mail* (27 August 1999).

⁴⁹ See, for example: Monahan, “Why Canada needs clarity,” *National Post* (14 June 2000); and James Travers, “PM puts his faith in written rules for federalism,” *Toronto Star* (12 December 1999). In addition, Scott Reid, a Reform Party official who had helped draft Reform’s Plan B policies during the mid-1990s, criticized the Clarity Bill for failing to establish clear federal positions on dividing the national debt and Quebec’s territory, among other issues; see Reid, “The Obscurity Act,” *National Post* (22 February 2000).

⁵⁰ “Quebec can be divided, PM says,” *Toronto Star* (30 January 1996); “PM avoids numbers game on sovereignty,” *Toronto Star* (31 January 1996); “PM pegs separation threshold at 60 percent,” *Canadian Press* (20 November 1999).

⁵¹ Travers.

⁵² A number of Quebec commentators criticized the Clarity Bill for exactly this reason; as Stéphan Larouche wrote, “Let us be clear. The raison d’être of [the Clarity Bill], as proposed by the federal government, has the ... purpose of withdrawing the federal government from its obligation to negotiate imposed by the Supreme Court of Canada and to retain Quebec against its liking in the yoke of the Canadian federation.” Larouche, “C-20 ou (la volonté) de se soustraire à l’avis de la Cour suprême,” *Le Devoir* (22 August 2000).

majority for independence without actually risking it encourages such strategic voting.”⁵³ The Chrétien government was also faced with a legal concern arising from the Supreme Court’s determination in the *Secession Reference* that a “clear majority” requires “a qualitative evaluation,” an evaluation that could only be conducted once the referendum results were in.⁵⁴ Thus, to establish a quantitative figure in advance of the next referendum could have left Ottawa vulnerable to a legal challenge; as Chrétien commented, “The lawyers told us that we could not put a number [on it] before we see the majority. We say that a simple majority is not acceptable, but it’s only after the referendum that the House of Commons will be in a position to decide.”⁵⁵

In any case, there was much more to the criticism of the Clarity Bill than its purported lack of clarity. The criticism, which began before the specifics of the bill were even known, related primarily to the appropriateness of the federal government drafting rules on referendum and secession procedures to be followed in Quebec. This criticism came from both separatists and federalists, and essentially for the same reason: that the bill was a provocation to Quebec and an interference with Quebec democracy. “The federal government,” Bouchard said, is “attacking the collective freedom of the Quebec people and the capacity of their institutions to decide their future.”⁵⁶ Quebec Liberal leader Jean Charest agreed, and introduced a motion in the Quebec legislature asserting that the referendum question and the requisite majority for secession were matters to be decided by the National Assembly.⁵⁷ As Daniel Turp argued:

The [Clarity Bill] grants the House of Commons the power to repudiate not only a motion under which the Quebec National Assembly would adopt a referendum question but also to censure the result of a referendum whose majority, always according to this House, would not be clear. Such an attempt is absolutely incompatible with the independence of each order of government and, therefore, with the federal principle.⁵⁸

⁵³ Harper, “Why Chrétien mustn’t flag,” *Globe and Mail* (2 December 1999). Harper was out of politics at this time, but the Reform Party used the same logic in defending 50 percent plus one as the requirement for secession. See “Ottawa plots referendum strategy,” *Globe and Mail* (27 August 1999).

⁵⁴ *Secession Reference*, para. 87.

⁵⁵ “Chrétien sets out secession rules,” *Canadian Press* (10 December 1999) (parentheses in original). Stéphane Dion made similar comments before a House of Commons committee. See “Dion attacks Reform’s stand on Clarity Bill,” *National Post* (17 February 2000).

⁵⁶ “PQ aims to mobilize people against Ottawa,” *Toronto Star* (14 December 1999).

⁵⁷ “Chrétien sparks storm over referendum rules,” *Canadian Press* (23 November 1999).

But neither Charest nor Turp was correct to suggest that the Clarity Bill prevents the government of Quebec from choosing the wording of the next referendum; the legislation simply requires that any referendum *intended to lead to Quebec secession* will be judged by the federal government for its clarity. Since the Supreme Court had already ruled that a clear question was a necessary pre-condition (along with a clear majority) for the commencement of secession negotiations between Quebec and the rest of Canada, and that clarity was to be determined by political actors, it only followed that the federal government would set out the conditions under which it would begin negotiations. Indeed, the Clarity Bill defends the “federal principle” by making it clear that the legitimacy of the entire secession process depends on the approval of both the government of Quebec and the government of Canada.⁵⁹

Related to the criticism that the Clarity Bill was an infringement on Quebec was the suggestion that the legislation would produce a backlash in the province. Bouchard predicted that the Clarity Bill would “haunt the political landscape of Canada forever” and boost separatism.⁶⁰ Federal Conservative leader Joe Clark called the legislation “inflammatory” for intruding on provincial jurisdiction and said this would lead to separatist gains in Quebec.⁶¹ NDP leader Alexa McDonough said that Chrétien was taking an “irresponsible approach” to the unity file in tabling the bill.⁶² Paul Martin, as he’d done with the partition debate, fell silent, refusing for several days to publicly support the Clarity Bill.⁶³ Finally, in a strange development, Preston Manning, whose party had in fact pioneered Plan B, described the Clarity Bill on the eve of its introduction in Parliament as “misguided” and not in the interest of national unity.⁶⁴

The opposition among the political elite to Plan B is reminiscent of the consensus that had previously existed in support of constitutional reform. Both the support for Plan

⁵⁸ Daniel Turp, “Ottawa réhabilite son pouvoir de désavouer un acte de l’Assemblée nationale,” *Le Devoir* (29 January 2000).

⁵⁹ Chrétien and Dion, in fact, have each indicated they would like Ottawa and Quebec to negotiate the terms of the next referendum in advance. See Young, *Struggle for Quebec*, 104, 181.

⁶⁰ “Secession ‘will haunt’ Canada forever: Bouchard,” *Toronto Star* (17 March 2000).

⁶¹ “Bill C-20 ‘a gift’ to secessionists, Clark says,” *National Post* (24 February 2000).

⁶² “Chrétien sets out secession rules,” *Canadian Press* (10 December 1999).

⁶³ “Chrétien sparks storm over referendum rules,” *Canadian Press* (23 November 1999); “Martin attacks PQ but dodges comment on Liberal unity strategy,” *Canadian Press* (25 November 1999); “Martin says he supports Chrétien on referendum,” *Canadian Press* (26 November 1999).

⁶⁴ “Reform leader Preston Manning turned up the heat in the unity debate...,” *Canadian Press* (24 November 1999).

A and the opposition to Plan B were guided by electoral considerations in Quebec that frequently led even national politicians to take a view contrary to national opinion. Preston Manning provides an excellent case study. As the leader of a western-based party during the early 1990s, Manning was able to adopt – without fear of reprisal in Quebec – policies on distinct society and Plan B that were at odds with the political establishment but nevertheless held substantial appeal. As the Clarity Bill was about to be introduced in late 1999, however, Manning was involved in the United Alternative initiative – an effort to broaden the Reform Party that eventually led to the creation of the Canadian Alliance – and was looking to attract the support of Quebec nationalists to his party. Hence his negative reaction – initially, anyway – to the Clarity Bill, even though he must have known the legislation would be popular with his traditional supporters in English-Canada.⁶⁵

As he had during Meech Lake, Jean Chrétien stood apart from other political leaders on Plan B in his willingness to take what many regarded as an unpopular stand in Quebec. By the time of the Clarity Bill, however, even as Chrétien and Dion faced a chorus of criticism as they moved to implement the legislation, the Plan B rewards were beginning to show. Despite the predictions of a backlash, the Chrétien-Dion policies were doing anything but leading to an increase in separatism; having pushed 60 percent at year-end 1995, separatist support had steadily eroded since the adoption of Plan B and by the autumn of 1999 was at its lowest level since the mid-1980s.⁶⁶ The predictions of a backlash were further dispelled by the support for Plan B policies within Quebec. A poll released in mid-February, as the Clarity Bill was being debated in the House of Commons, found that two-thirds of Canadians nationwide supported the legislation,

⁶⁵ Hébert.

⁶⁶ An Ekos poll offering a strict choice between the “status quo” and “complete independence” had 64 percent of Quebecers choosing the former, 30 percent the latter. A “senior consultant” at Ekos attributed the low separatist support to the Chrétien-Dion initiatives in the aftermath of the 1995 referendum. See “Federalism support edges up, poll says,” *Toronto Star* (15 December 1999). A poll based on a question of a sovereign Quebec with economic and political ties to Canada had Yes support at 38 percent. See “Support for Quebec sovereignty drops below 40 percent,” *London Free Press* (16 October 1999); “Rae claims hardball bringing dividends in sovereignty battle,” *London Free Press* (19 October 1999). As for the 1995 figure, the *Maclean's* year-end survey for 1995 found 59 percent of Quebecers saying they would vote Yes to the same referendum question as in 1995. See “Can Canada Survive?” *Maclean's* (25 December 1995-1 January 1996).

including a majority of Quebecers.⁶⁷ Within Quebec, 51 percent agreed that the legislation was “a reasonable effort to protect democracy and fair play,” while 39 percent believed the legislation represented an “improper interference” on the part of the federal government in a political process that should be determined by the legislature of Quebec.⁶⁸ In explaining support for the Clarity Bill in Quebec, COMPAS president Conrad Winn commented, “Quebecers do believe in due process and fairness. Clearly a lot of Quebecers who are even separatist voters believe that the Clarity Bill is fair.”⁶⁹ By garnering this support within Quebec to go along with the support for Plan B outside the province, Chrétien and Dion were able to avoid the deep national divisions that had rendered constitutional reform ineffective in the pursuit of unity. With Plan B, Chrétien and Dion had an effective unity strategy based on national support.

But quite apart from Chrétien and Dion, it was the reaction of Liberal MPs to Bouchard’s rebuke of the Clarity Bill that led to its tabling in mid-December 1999. Throughout October and November, Chrétien and Dion were having difficulty convincing Liberal MPs – particularly those from Quebec – to proceed with the legislation.⁷⁰ In early December, though, Bouchard claimed that Ottawa was attempting to make secession so difficult that, following a Yes vote, he would have to consider simply proceeding with a UDI.⁷¹ During the same period, Bouchard rejected an offer from Chrétien in which the Quebec premier was asked not to hold a referendum in his current mandate (he had been re-elected in 1998) in exchange for Chrétien’s vow to drop the Clarity Bill.⁷² According to Liberal MPs who had been wavering over the new legislation, Bouchard’s comments during this time – *his* tough stand on separation – convinced them that Ottawa needed to be prepared for the next referendum, and that this meant proceeding with the Clarity Bill.⁷³

⁶⁷ Nationwide, 65 percent supported the Clarity Bill while 26 percent were opposed. “65% support Ottawa’s plans on Quebec negotiations,” *National Post* (17 February 2000).

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ “PM pressured to back off Quebec,” *New Brunswick Telegraph Journal* (21 October 1999); “Liberals hung up on referendum strategy,” *Canadian Press* (21 November 1999).

⁷¹ “Chrétien referendum strategy no real surprise,” *Canadian Press* (5 December 1999).

⁷² “PM calls again for referendum moratorium,” *Canadian Press* (29 November 1999); “Chrétien referendum strategy no real surprise,” *Canadian Press* (5 December 1999).

⁷³ “Chrétien referendum strategy no real surprise,” *Canadian Press* (5 December 1999).

The Clarity Bill was introduced in the House of Commons just prior to the Christmas break and was passed by the Commons in mid-March 2000, wreaking a good deal of havoc along the way. Despite the initial opposition of the leaders of Reform and the NDP, both parties did a quick U-turn in response to public opinion.⁷⁴ Stephen Harper, in fact, out of politics at the time, wrote an open letter to newspapers excoriating Preston Manning for having disowned the Plan B agenda the two men had developed.⁷⁵ A similar split occurred in the Conservative caucus, as a number of the party's English-Canadian MPs rebelled against Clark and voted with the government. Only the Bloc Québécois MPs were united in opposing the Clarity Bill; the party fought the legislation to the end, proposing more than 400 amendments that required 36 consecutive hours of voting as part of a final filibuster before the bill was passed.⁷⁶

Perhaps, though, the most interesting development in the Clarity Bill's sojourn into law took place in the Senate, where Serge Joyal – a former Trudeau cabinet minister and a chief figure during patriation – launched a fresh critique of the Clarity Bill that threatened for a time to derail the legislation.⁷⁷ In a Senate speech on May 11, Joyal became the first member of either parliamentary house to take the view that Quebec simply may not secede from Canada, not unilaterally, and not through negotiations with the federal and other provincial governments; that Canada is a country “one and indivisible.”⁷⁸ His argument, to be clear, wasn't that this is how things ought to be; his argument was that this is how things *are* as a matter of constitutional law, and he offered a detailed case to support his position, at the heart of which were two claims: that the territory of Canada belongs to all Canadians and that the sovereignty and constitution of the Canadian state also belong to Canadians (rather than to Parliament or the Crown).⁷⁹ This led to Joyal's conclusion that only the Canadian people as a whole – through a national referendum passed in every region of the country – may consent to a violation of

⁷⁴ Ibid.; “Liberals catch opposition parties napping,” *Toronto Star* (14 December 1999).

⁷⁵ Hébert.

⁷⁶ “Clarity Bill passes as amendments fail,” *National Post* (16 March 2000).

⁷⁷ “Liberal senator challenges Clarity Bill premise,” *Toronto Star* (12 May 2000); Andrew Coyne, “Sen. Joyal drops the bomb,” *National Post* (12 May 2000); Richard Gwyn, “Clarity Bill is a risk for Canada,” *Toronto Star* (19 May 2000).

⁷⁸ Coyne, “Sen. Joyal drops the bomb.”

⁷⁹ Serge Joyal, “The Senate debate Bill C-20,” *Toronto Star* (16 May 2000) (excerpts from Joyal's Senate speech); Coyne, “Sen. Joyal drops the bomb”; Paul Wells, “Bill's critics would unleash chaos,” *National Post* (20 June 2000).

the territorial integrity of their country, which he equated to an annihilation of the constitutional order.⁸⁰

Joyal's argument therefore comprised a sharp attack on the Clarity Bill, not simply for its acceptance of the divisibility of Canada, but for providing MPs exclusive power in determining whether to negotiate the country's break-up. Joyal's speech – which garnered significant attention in the press, not to mention support from Joyal's Senate colleagues – suddenly placed Stéphane Dion on the defensive, not, as he usually was, for being too tough on Quebec separatism, but for being too lenient. For a while it even looked as though the Senate might defeat the Clarity Bill, or at least send it back to the House for amendment, a prospect that led Dion to schedule two lengthy appearances before a Senate committee to defend his bill, and led Chrétien to appoint two new senators favourable to the Clarity Bill and to arrange private sessions with the Liberal Senate caucus in an urgent lobbying effort.⁸¹ In the end, though, the two men emerged victorious: although a few amendments were only narrowly defeated, the Senate passed the Clarity Bill, and Chrétien and Dion had their law.⁸²

According to one analysis, however, the Senate debate on the Clarity Bill was more a beginning than an end. Andrew Coyne wrote at the conclusion of the Clarity Bill's journey through the Senate,

The Senate having voted to pass the Clarity Act unamended, Senator Serge Joyal and his hardy band of irregulars have lost the political battle. They have, however, won the intellectual war. Indeed, in two months of debate on the bill, they may even have changed Canada.

An idea has been planted in the country's consciousness, an idea that, I predict, will prove hard to uproot. That idea is, simply, that Canada is a nation – not “two nations,” not a “compact” of the provinces, but a nation, like other nations, one and indivisible.⁸³

Well...

⁸⁰ Joyal, “The Senate debate Bill C-20,” *Toronto Star* (16 May 2000); Coyne, “Sen. Joyal drops the bomb.”

⁸¹ “PM aims to silence Senate on Clarity Bill,” *National Post* (3 March 2000); “Chrétien set to fill vacant Senate seats to ensure passage of Clarity Bill,” *National Post* (28 March 2000); “Liberal senators opposed to Clarity Bill vow to boost attacks,” *National Post* (21 May 2000); “Chrétien criticized for appointing elderly supporters,” *National Post* (21 June 2000).

⁸² “Senate passes Clarity Bill,” *National Post* (30 June 2000).

⁸³ Coyne, “A nation once more,” *National Post* (30 June 2000).

Conclusion:

National Unity under Plan B and the Patriation Accord

Whether or not it was an exaggeration to suggest that the Senate debate on the Clarity Bill would change the consciousness of Canada, Coyne was at least right to argue that the concept of Canada as one and indivisible only ever will exist in the consciousness since it cannot exist – not now – under Canadian law. This is one consequence of the Chrétien-Dion unity initiative of the post-referendum years, or I should say, a consequence of one particular initiative – the Supreme Court reference on Quebec secession. Prior to the Court's decision in that case, it would have been entirely possible for the federal government to assert Canada's indivisibility under law. This may not have made for a wise policy, but it was certainly a possible policy, and one with some support in law. Senator Joyal has offered an argument to the effect that secession is illegal under the Canadian constitution, an argument reinforced by international law, the bedrock principle of which is the right of states to defend their territorial integrity from external and internal threat.¹

In a politically-motivated line of argument in the Supreme Court reference decision, however, the doctrine of indivisibility has been closed off. If Quebecers vote clearly to separate, the Court has ruled, then the rest of the country must negotiate in good faith the break-up of the country. Those federalists who objected to the Court's ruling on this point usually did so by expressing concern over the implications of the duty to negotiate in the event of a Yes vote in Quebec. Monahan, for instance, has argued that this requirement reduces the flexibility of the federal government in reacting to a Yes vote, ruling out the possibility, among other things, of Ottawa holding an immediate

¹ Monahan, "Public Policy Role of the Supreme Court," 86.

referendum of its own either across Canada or in Quebec.² To Coyne, however, the acceptance of the divisibility of Canada posed a more fundamental problem:

What is the message this sends to Quebecers? It says, first, that they are not part of a single Canadian people, if such an entity can be said to exist. They are, rather, a separate people, tied to the rest not as individuals, by the “mystic chords of memory” that bind the members of a nation together, but by a sort of contract: a treaty, if you prefer, as between peoples. Except that unlike a contract or a treaty, this one can be revoked at any time: the rest of Canada has no right to hold Quebec to it.³

Whereas Monahan and others voiced practical concerns over the principle of what Coyne termed “negotiations on demand,” Coyne himself was more interested in the theoretical question of how the *Secession Reference* and the Clarity Bill would affect the sense of Canadian nationhood; indeed, in the end he resorts to the hope that it is in the “country’s consciousness” that true victory lies.

If anything, though, it seems likely that the combined effect of the *Secession Reference* and the Clarity Bill – respectively the most prominent Supreme Court ruling and legislative initiative of the Chrétien years, and each devoted to the rules of secession – was to establish (if only more firmly) in the public consciousness that Canada is indeed divisible. This probably does have negative consequences for Canada, inasmuch as federal-provincial disputes, and not only those concerning Quebec, continue to become entangled in the national unity issue, and thus take on a certain rancour that might not exist were Canadians to start from the premise that they are “a single people,” that whatever the difficulties, the country will pull through together. In February 2003, for instance, Premier Klein of Alberta remarked that “you can’t be part of the Canadian family if big brother down there in Ottawa doesn’t want you as part of the family,” a comment that (in addition to other such comments from Alberta officials) led to a feud between Ottawa and Alberta – was this a separatist threat or wasn’t it? – that overshadowed whatever policy disagreements inspired the dispute in the first place.⁴

And yet, even if the divisibility of Canada has been established as a theoretical issue and continues to influence political debate, the more obvious consequence of the Chrétien-Dion unity initiative has been to make the division of Canada an unlikely

² Monahan, “Public Policy Role of the Supreme Court,” 93-4.

³ Coyne, “One nation, divisible?” *National Post* (18 February 2000).

prospect; indeed, from a practical standpoint, Canada may well be one and indivisible.⁵ Judging by the decline in separatist support in Quebec since the adoption of the Chrétien-Dion Plan B, it appears the central purpose of Ottawa's strategy has been met – to convince Quebecers that separation would be a messy and undesirable affair. In this, the most important Plan B policies have been the support for partition and the effort to establish the illegality of unilateral secession, each of which has proven a major deterrent to separation in Quebec. But separatism has not only declined, it's been boxed in. As a result of the *Secession Reference* and Clarity Bill, a future separatist government in Quebec is going to have a much more difficult time trying to run another referendum on the basis of a question like the one posed in 1995 or 1980. Bouchard himself acknowledged this following the *Secession Reference* when he remarked that in light of that ruling he "hope[d]" to make the next referendum question "clearer than it was before."⁶ Given the success Plan B has already had in reducing separatist support, it is particularly difficult to imagine separatists winning that next referendum, should it ever come, on a clear question.⁷

Regardless, though, of the results of a referendum campaign, Ottawa and the provinces retain such flexibility under the *Secession Reference* and the Clarity Bill that, should they choose, they can prevent a negotiated secession from ever occurring. For one thing, even where Parliament decides Quebecers have voted clearly to secede, some provinces may draw a different conclusion and refuse to enter negotiations. Or even if negotiations begin, the federal government or certain provinces may insist on federalist regions of Quebec remaining in Canada, a "good faith" negotiating position that would likely kill any chance of a settlement all the same. Remember also that British Columbia and Alberta require all constitutional amendments to be approved by referendum. With these two provinces having to vote to approve a secession agreement with Quebec, and

⁴ "Klein warns Ottawa of separation threat," *Calgary Herald* (19 February 2003).

⁵ Coyne's *National Post* colleague Paul Wells made exactly this point in discussing the Senate debate on whether Canada is indivisible: "I'll leave it to Senator Joyal and his lawyer friends to decide whether that's true, as a matter of law. But given the astonishing difficulty of lining up the ducks that would be needed to make the secession happen, it's almost a theological argument. Getting out of Canada is harder than the separatists can possibly imagine." See Wells.

⁶ "Bouchard agrees to 'clear-question' referendum," *New Brunswick Telegraph-Journal* (29 August 1998).

⁷ Winning on an unclear question – at least as Parliament judges it – might be even more difficult, since Ottawa would be able to depict the entire process as illegal, something Martin and Blais have determined is the ultimate argument for federalists. The possibility of a UDI is considered later in this Conclusion.

with the precedent of the Charlottetown referendum already in place, it's virtually assured that Canadians from coast to coast will demand the right to vote on secession.⁸ Consider this and we very quickly arrive at the scenario Senator Joyal, in the course of his "one and indivisible" speech, argued is necessary for a province to secede – the approval of Canadians in every region of the country in a national referendum.⁹

This is a point that was missed in much of the analysis of the *Secession Reference*. It's true that the Court's judgement distinguished between negotiating secession and ratifying secession – only the former is constitutionally required – yet the decision was written on the apparent assumption that the negotiators would also be the ones to ratify the agreement. The whole point of the "good faith" provision, after all, is that the negotiating parties actually attempt to reach an agreement, and it was for this reason that the duty to negotiate was seen as a victory by Quebec separatists. But that victory looks rather hollow when Canadians outside Quebec can then come along and reject the deal in a referendum.¹⁰ While the *Secession Reference* might persuade the federal and provincial governments to negotiate in good faith, there's absolutely no way to monitor the "faith" of every Canadian entering the polling booth on referendum day. In the end, though, that's where secession is likely to be decided; contrary to Coyne's argument, the rest of Canada really will be able to hold Quebec to Confederation.

So far, though, I've been presuming a legal secession – or rather, the near impossibility of one. And indeed, it is the difficulty of achieving secession in the face of Plan B that suggests the only way Quebec will ever declare independence is through a

⁸ This could very well include the province of Quebec, as Quebecers may demand the right to vote on the secession agreement reached by the Quebec government.

⁹ It remains in doubt the exact extent to which the rest of the country would have to approve a secession amendment, since there is no consensus on the applicable amending formula. The Supreme Court avoided this issue in the *Secession Reference* and the Clarity Bill is also silent on the matter. Among legal scholars, the debate is whether secession would require the approval of the federal government and every provincial government (under s.41 of the *Constitution Act, 1982*) or the approval of the federal government and seven provinces representing 50 percent of the population (s.38). Even if the latter formula applies, however, the Regional Veto Act of 1996, which grants British Columbia, the Prairie provinces, Ontario, Quebec, and the Atlantic provinces a veto over constitutional change (the federal government effectively lent its veto to each of these regions), means that for any constitutional amendment to pass the approval of seven provinces representing 92 percent of the population (according to current population figures) is now required. Of course, as legislation, the Regional Veto Act can always be repealed by the federal government. Monahan, *Constitutional Law*, 2nd ed. (Toronto: Irwin Law, 2002), 200, 207, 218; Hogg, *Constitutional Law of Canada*, 3rd ed. (Scarborough: Carswell, 1992), 126.

¹⁰ The victory looks even more hollow if we assume that the better the deal Quebec is able to secure at the negotiating table, the greater the odds Canadians elsewhere will reject it.

unilateral declaration of independence. This was essentially the conclusion reached by Lucien Bouchard in commenting that the Clarity Bill could force him to proceed with a UDI after a Yes vote in Quebec.¹¹ But while Quebec separatists continue to present this as a legitimate option, to actually proceed with a UDI would be an incredibly risky endeavour; a UDI is now widely regarded as illegal – at the very least Quebecers know (or would know, in the event) that the Supreme Court, the federal government, and important segments of Quebec society regard it as such – and the accompanying prospect of two regimes claiming sovereignty over the territory of Quebec would seem destined to lead to political and economic chaos, with a strong possibility of violence. In fact, the only way to avoid such post-UDI conditions would be to reach a consensus around a UDI in Quebec so strong as to be implausible. In the end, then, though the possibility can't be discounted that a separatist government would issue a UDI, it does seem highly unlikely, and even if issued would provide no guarantee that an independent Quebec would actually form. And if a UDI comprises the *likeliest* scenario under which Quebec secession can be achieved in the era of Plan B, then we might as well describe Canada as indivisible, since that is the reality.

But to discuss Plan B only in terms of its effect on Quebec secession is to miss the other half of the story. Gordon Gibson didn't miss it and in a great twist to the Plan B saga became an early and persistent critic of the Chrétien-Dion Plan B. As we've seen, Gibson wrote *Plan B* in 1994 as a way to prepare Canadians outside Quebec for the potential break-up of the country, which he considered all too likely in the absence of constitutional change. Indeed, Gibson recommended a unity strategy based on large-scale decentralization and was critical of the Chrétien government's defence of the constitutional status quo.¹² In this we have the seeds of Gibson's opposition to the Chrétien-Dion Plan B, for while everyone else was focused on Plan B's implications for separatism, Gibson was among the first to realize that Plan B was also killing constitutional reform. As early as the *Bertrand* case of 1996, Gibson wrote that "the rest of Canada ... has taken great comfort from the interpretation that Quebec separatism requires the consent of Ottawa and the other provinces. This attitude serves to undermine

¹¹ For the same view, see Larouche.

¹² Gibson, "Chapter 10: Plan C," *Plan B*.

the search for creative solutions to our unity problem.”¹³ It was an astute observation, particularly for the time. Yet, as criticism of the Chrétien-Dion Plan B, Gibson’s point comes across a little bizarre, for it is the seeming *success* of the government’s unity strategy that he bemoans. Realizing that the existence of a national unity peace would remove the impetus for change, and with it his preferred constitutional outcome, Gibson feared the peace. Of course, to call this bizarre is to imply that it is in some way unusual, which it isn’t; Gibson’s argument simply places him in a long line of academics and politicians – usually from Quebec or sympathetic to the Quebec government’s demands for autonomy – whose belief in constitutional reform as a policy matter has been served by linking the issue to national unity.

We have the irony, then, of Plan B emerging out of the consensus linking constitutional reform and national unity only to expose, in the end, the false choice informing that consensus. As de Mestral and Cameron worded it after the 1995 referendum, Canadians were going to have to choose between constitutional reform and killing Canada. Yet no such choice was required, as the years since the 1995 referendum have seen the country preserved along with the constitution.

That, as I wrote at the outset, is the remarkable story of the post-referendum era, and it has been the purpose of this thesis to explain it by focusing on the shift in federal strategy from constitutional reform to Plan B. As we’ve seen, the dominant view not only in the wake of the 1995 referendum but for much of the past twenty years has been that the survival of Canada was dependent upon finding a new constitutional settlement. Just as constitutional reform had been the preferred option of the Mulroney government in dealing with national unity through the 1980s and early ‘90s, it was the option Prime Minister Chrétien instantly turned to in the desperate final days of the 1995 referendum campaign. Essentially constitutional reform had become the default position of the federal government in handling a national unity crisis. And yet, as the Mulroney years demonstrated, and as Chrétien himself discovered in his post-referendum quest for distinct society, constitutional reform was incapable of uniting Canadians; indeed, it is difficult to imagine an issue that could more divide Canadians.

¹³ Gibson, “How the Bertrand case helps Quebec’s sovereigntists,” *Globe and Mail* (10 September 1996).

But out of all this division – out of the opposition to the constitutional demands of Quebec – came Plan B, a strategy developed by the Reform Party in the pre-referendum years that was based on an acceptance of the constitutional status quo. By working to polarize the constitutional question facing Quebecers as a choice between the existing Canada and secession (with rules attached), the Reform Party initiated a Plan B policy that was easily transformed into a national unity strategy by Jean Chrétien and Stéphane Dion following the 1995 referendum. Unable to reach an agreement on distinct society, Chrétien and Dion accepted the constitutional status quo and turned their attention to the rules of secession, seeking to make the separatist option – the only alternative to Canada – difficult and unattractive. As I’ve described in this concluding chapter, the strategy has worked.

But there was more to the success of Plan B than challenging the separatist project and making it look risky; Plan B worked for the very reason that it was a national unity plan with national support. Starting with a solid base in the nine provinces outside Quebec, Plan B also attracted substantial support within Quebec, appealing to federalists in the province and to a sense of fairness on matters such as partition and the importance of a clear referendum question. Just as crucial, though, was the national support for the constitutional order that Plan B defended. I’ve argued that patriation was a viable national unity settlement from the start, building a bridge, much like Plan B, between federalist Quebec and the rest of the country, and that this was evident by the mid-1980s when Mulroney reopened the constitution. But time has only strengthened patriation’s case. Though Mulroney returned to the constitutional table by condemning the patriation settlement as a national unity failure, it was Mulroney’s solution, rooted in an alternative vision of the country, a two nations vision supported in Quebec but widely opposed outside the province, that proved incapable of uniting Canada.¹⁴ In fact, it was the perception that Meech Lake undermined basic principles enshrined in patriation – the equality of provinces and of all Canadians – that brought about its downfall, and even a Meech Lake supporter like Kenneth McRoberts seemed struck at the time by the hold patriation had taken on the country; “as the reaction to the Meech Lake Accord demonstrates,” he wrote, the vision of Canada entrenched in patriation “has had a

¹⁴ McRoberts, *Quebec*, 400; Monahan, *Meech Lake*, 5-6.

surprising degree of tenacity.”¹⁵ What struck observers during Meech Lake ought to strike us now. For the second time since the patriation agreement was signed in 1982, Canada is experiencing a national unity calm. The country didn’t achieve the sort of constitutional change Robert Bourassa envisioned upon his return to power in 1985, but the stability, the constitutional peace he asked for, is with us today.

Whether this is due to the specific terms of the patriation settlement is difficult to know. It is perfectly possible that the Meech Lake Accord or any number of constitutional arrangements could have proven just as stabilizing in the long run, as even a constitution controlled by the British Parliament proved adequate in weathering the separatist storm in the years prior to patriation. Perhaps the lesson to take from the years following the 1995 referendum is that the constitutional issue is irrelevant to national unity, that national unity is best defended by focusing on the perils of secession. But it’s also possible that patriation *has* been a force for unity; it’s worth noting, for instance, that the Charter of Rights and Freedoms is nowhere more popular than in Quebec, and it may be that Trudeau was right in arguing that the vision underlying the patriation accord, the vision of Canada as an integrated national community, is the only basis on which Canada can long survive.¹⁶ All we really know is what the last twenty years have taught us: that we have twice experienced a national unity peace, and each during times when an acceptance of patriation has been a cornerstone of federal policy; that, indeed, the only national divisions have come as a direct result of the search for constitutional reform, a result, that is, of the effort to revisit the patriation agreement. We have lived through twenty years of constitutional haggling only to determine that patriation is a defensible basis for Canadian unity after all.

¹⁵ McRoberts, *Quebec*, 400.

¹⁶ On the popularity of the Charter, see Fraser, “Rights document now part of Quebec’s fabric,” *Toronto Star* (14 April 2003). Fraser cites a 2003 poll that found 88 percent of Canadians believe the Charter is “a good thing” for Canada, including 91 percent of Quebecers.

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