



Thoughts on our Political and Constitutional Future



Testimony to the Bélanger-Campeau Commission

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In October 1990 the Commission on the Political and Constitutional Future of Quebec began holding public hearings. It has heard from groups and individuals representing a wide cross section of Quebec opinion. The following are slightly abridged extracts of testimony from representatives of two political parties and four of the many expert witnesses asked to appear before the Commission. Bernard Landry is First Vice-President of the Parti Québécois and a former minister in the Lévesque Government. Jean Chrétien is Leader of the Liberal Party of Canada. Louis Bernard is Senior Vice-President of the Laurentian Bank of Canada. Daniel Latouche teaches at the National Institute for Scientific Research, University of Quebec in Montreal. Henri Brun is a professor of law at Laval University and Charles Taylor is a professor of political science at McGill University. The full text of their testimony will be found in the Committee Proceedings for the date indicated.

Bernard Landry, Parti Québécois (November 13, 1990): For twenty-two years now, first under the leadership of an admirable man whose presence among us and among our people is greatly missed, René Lévesque, we have been advancing, to the best of our ability and with the most democratic fervour, the thesis of political sovereignty for Quebec, coupled with economic association with the rest of Canada.

From the very first months of our party's history, these two notions were so closely linked that the movement which immediately preceded the official inception of the party was called the *Mouvement souveraineté-association*. Through all the tribulations of this last quarter century, the idea has gained ground. It has become increasingly clear, increasingly intelligible. René Lévesque with his extraordinary sense of the formula, only a few months

before his death, said to students at Laval University that Quebec must continue in its efforts to achieve the status of a *full-fledged, recognized country*. That is one of the best possible definitions of national sovereignty: a full-fledged, recognized country. But we claim no copyright, nor any exclusivity. To the contrary, we want this idea to be shared by more men and women. We are not concerned if someone has been a sovereignist for twenty years, twenty months, twenty days, or will become one in the next twenty minutes. What is important is that Quebec finally choose its own destiny.

You have often emphasized the need for clarity. I think that the Commission and Quebec's worst enemy right now is confusion. So at the risk of being repetitive, I will reiterate in simple terms what sovereignty is. Sovereignty is the exclusive power of a State to make the



Bernard Landry

laws that apply to its territory. That is to say, that all laws to be observed by the citizens of Quebec in a context of sovereignty would be passed in this house, the National Assembly of Quebec. Secondly, it is the exclusive power to levy taxes within its territory on its citizens, who, for our purposes, are called taxpayers. This does not mean that the yield of these taxes and levies cannot be paid to multilateral or bilateral international agencies should such economic co-operation be necessary. Thirdly, sovereignty is the power to enter exclusively into all agreements, treaties or accords between nations, linking one people to another. It is at once a little and a lot, and that is what is now practiced, in varying degrees, by some 200 groups of human beings who have the status of sovereign nations, from the largest, such as the new reunified Germany, to the smallest, such as the Island of Nauru with its 10,000 inhabitants, including the intermediate and medium sized power, the small countries and the medium sized countries like Belgium.

Why must we continue to strive, as obsessively and persistently as some have in the past for this status for the people of Quebec? Quite simply because it is complex, difficult, and reaches down into the very roots of human nature itself. Once a group of people understands and realized that it has the characteristics of a nation, it will not rest until it has achieved equal status with other peoples and other nations. It's as simple as that. When a people or nation is expected to parade as a province, even with all the good will and apparent logic in the world, one day the makeup will wear off and the disguise will no

longer conceal what is underneath. Even wearing the distinct society label, with all respect to those who, in good faith, have advanced this concept, will be a disguise. A nation is more than a distinct society. "Distinct society" as a concept was perhaps functional but it was also limiting. Had it been accepted, it would have been very disappointing to our compatriots in English Canada, who would have seen that, the next day, we were lined up asking for more.

Consequently, Quebecers constitute a people. This people, like most others, accommodates in its midst minorities of all kinds. One, in particular is the English-speaking minority, British in origin, and those associated with it in the traditional sense of the term. There is no doubt that this minority is also part of the Quebec people, as other linguistic minorities are part of the French, Belgian or Swiss peoples.

How do modern peoples who have acceded to sovereignty actually practice it today? Clearly, because of the movement largely begun since World War II, they practice it through inter-dependence, with large institutions like the International Monetary Fund, GATT, or, on a more regional basis, the European Economic Community and the European Free Trade Association. The prosperity of peoples and the size of their markets are no longer in opposition to their national sovereignty. Perhaps it was the great political revolution following the two cruel confrontations which battered the Western world twice in fewer than fifty years, that finally made us realize that peoples cooperate with each other in equality and dignity, not when forced to do so, but when they sign documents which are accords or treaties.

You have undoubtedly talked a lot about Europe and will continue to do so. It must be remembered that Europe was beset by brutality, by the use of force, by repression, at least ten times in the history of humankind. And the only Europe to succeed was the one in which sovereign peoples and nations, founded an exemplary community, a model which has been used by others. This model would perhaps be relevant to your work here. It is called the European Free Trade Association: 30,000,000 inhabitants, six countries, with a flexible structure, durable friendly relations and almost no disputes.

But, one way or another, it can be concluded that, economically, there are no more small groups of people. Luxembourg has 100,000 fewer inhabitants than the city of Laval in Quebec. But it has the same market for its manufacturers as Germany and France. Exactly ten years after the Treaty of Rome goods made in Milan could be sold in Paris as if they had been made in Paris. This is how peoples are cooperating with each other, in mutual respect and support. I would add that in this context of globalization and homogenization of economic activity,

fighting for national identity becomes essential to the very stability of humanity. Human beings who discover their diversity, the dignity of peoples and of the men and women who make up those peoples with their own particular characteristics will find it increasingly necessary to acknowledge this vital identity by consolidating national destinies. This is why I say that Quebec's acceding to sovereignty is an element that is altogether progressive, exemplary and necessary for the community of nations.



Jean Chrétien, MP, Liberal Party of Canada (December 17, 1990): Today, we find ourselves at a crossroads once again. Over the course of its history, Quebec has had to take many decisions which have affected its future. At the time of the American Revolution, we decided not to participate but to remain an English colony. In 1840 and 1848, Lafontaine reformists united with Baldwin reformists to obtain responsible government. This was another choice made by the citizens of the Province of Quebec. In 1867, although Macdonald wanted to create a unitarian country, Cartier, a Quebecer, imposed a federative system at the time of Confederation. We were one million Francophones. Today we are close to seven million. At the turn of the century, Quebec's territory, which had been 194,000 square miles, was tripled to 595,000 square miles by an Act of the Canadian Parliament.

My colleagues and I feel that now, Quebec has a fundamental choice to make. This choice is either to leave the federation to become an independent state ruling on all legislation applying to all Quebec citizens within its territory, or to remain a member of the federation. I want people to realize that the time has come to define matters clearly, to leave behind the confusion and to clearly establish what is the choice.

I believe the federal system is the best system in modern society at present. This is the path Europe is now choosing. Yesterday, in the *New York Times*, they were talking about what was going on in Rome, how it was moving even more quickly toward integration into the European Community, how the constant transfer of national sovereigns to the European Community is being stepped up. All observers, news releases and reports clearly indicate that the European Community is moving toward a system giving more powers to the Community's parliamentary assembly. There is talk of establishing a European code for social programs across all European countries. It's obvious that Jean Monnet's dream of growth toward the model of the United States



Jean Chrétien

of America is picking up momentum. A number of people have talked about a confederative system in which States are united to form one country merely by delegating powers and from which they could withdraw at will. The history of various peoples shows us that all confederative systems which survived eventually became federations. We could cite the example of the United States and of many other countries.

I want to tell you that I chose the "Canada" route because it is the best way to ensure all citizens of linguistic and cultural security and, at the same time, economic and social progress. We have made considerable progress in this country over the past century. Quebecers have made major, fundamental contributions to shaping this country. Today, what we have become can be attributed to our having been successful at living within a system where sovereignty is shared. The provinces have sovereignty over certain matters and the federal government has sovereignty over others. We can remain in the past but I would rather look toward the future. I want to tell you that it is possible to retain our differences and set common goals. We spend far too much time talking about what divides us and too little time talking about what unites us. But internationally, we are seen as a country which has overcome many difficulties, which has developed cultural and social instruments almost unequalled worldwide and which have ultimately allowed, Francophones, both those in Quebec and the million other Francophones not from Quebec, to become

what we are, to progress, to play an increasingly important role in this country.

I would like to see all regions of Canada find a comfortable niche in the Canada of tomorrow. The Liberal Party has always been a party for reform and I believe that reform is possible. We have to change our institutions. We must not be shy about looking at the division of powers between the federal level and the provinces, because what the Fathers of Confederation did in 1867 was done in a context that is over 100 years old. What we must do together, is enable the country to continue in a modern manner, into the 21st century so that we can deal with the problems of world globalization.

Collectivities are becoming larger and larger and what makes the power of these groups greater is often their diversity in unity. Earlier, I talked about the European example, but here we are, perhaps at the cutting edge of what might be a necessity for Europe's survival. They have had problems and they will have problems. But here in Canada, we have always looked at the country with an open mind, an even temper and a generous nature. Some people have not but the Canadian mind-set has always favoured the human qualities we are so proud of. So, what is our challenge today? Our challenge is to work together to modernize our Constitution to better prepare Quebec and Canada to face the trials of the 21st century. I believe it is a task we can carry out.

We can not forget that throughout Quebec's history, we have had to make major decisions and I think that it is perfectly normal to launch the country into the 21st century by reflecting on the challenges overcome by people like Lafontaine, Cartier, Henri Bourassa, Laurier and all those who saw the chance for this small colony to become one of the seven powers of the Western world.



Louis Bernard (December 18, 1990): I have organized my thoughts into five main ideas that I would like to submit to you. The first is that, come what may, Quebec should maintain, at least in the beginning, its internal political structures and, in particular, should maintain its parliamentary system and its electoral system. These are political structures we have truly mastered, we are familiar with, and which in my opinion do not have to be reformed immediately.

We must not forget that our National Assembly is one of the oldest parliaments in the world. In the two centuries it has existed, we have learned to adapt this British invention to our own context. Today, our Quebec parliamentary system is very different from the British

parliamentary system or the Canadian parliamentary system. It meets the needs of Quebec very well. Furthermore, the very creation of this Commission, which is an expanded parliamentary commission, a Quebec invention, is solid proof that we are capable of using the institutions we have.

This is a matter which could be debated and upon which others may have different ideas. But the point that I would like to make, today, is that even if we think that the presidential system is preferable to the parliamentary system, or even if we think that the proportional representation is preferable to voting for a single candidate in one round, we should agree, as a society, not to call into question our familiar institutions at the very same time we begin to review our relations with Canada and the rest of the world.

The second idea is that the proximity of the United States means that it is in Quebec's long-term interests that English Canada remain a distinct political entity. I do not think it is a good idea for us to be brash or reckless, for our neighbour to the south is a formidable giant with a population 40 times ours. If all of Canada fell apart, and the other provinces joined the United States, we would be completely isolated. We would find ourselves surrounded on all sides by an economic, cultural and social ocean which, with time, could easily overwhelm us. We have only to think of the pressure the American reality already exerts on us to have an idea of the pressure should we lose Canada as a buffer.

I am not saying that this prospect should prevent us from taking our own road. I am simply saying that, as far as possible, we must favour the continuation of English Canada as a distinct political entity so that our distinct character may be backed up by that of our Canadian neighbours. Against the power of the United States, two distinct and, if possible, allied societies are better than one. We must not forget that we will have to live with the future for a long time so we have to do our best to evaluate the very long-term consequences of the actions we take today.

The third idea is that both Quebec and Canada have an interest in being associated in an economic alliance of sovereign countries. I personally believe that it is in Quebec's interest to become a fully sovereign nation, in other words, with the power to make its laws, levy its taxes and conduct its international relations. The reason behind my conviction is very simple. I believe that this is in the nature of things and is in keeping with the very laws of life. Whether we like it or not, we have become a nation and we must be aware enough to admit it and courageous enough to take all its consequences. If we want to make our contribution to the progress of humanity and guarantee the development of our



Members of the Bélanger-Campeau Commission including Premier Robert Bourassa (first row, fifth from the right) and the leader of the Opposition, Jacques Parizeau (first row, fifth from the left)
(Marc Lajoie Ministère des Communications)

remarkable and unique society, we have to assume responsibility for our own destiny. Being master of your fate is not only a right, it is a duty. Furthermore, it must be said that sovereignty will enable Quebec to enjoy full authority over matters such as communications, labour, social security and the environment, vital to its development and which would be practically impossible to get control over under a federal system, even a renewed one. Sovereignty would also guarantee Quebec everything it needs to permanently and definitively ensure the absolute security of its cultural identity. However, in today's world, sovereignty can exist only with interdependence. This universal trend prevails on every continent and we are no exception to the rule.

The fourth idea is that this new arrangement is best initiated quickly. I think that if decisive steps are not taken immediately, there is a good chance we will go around in circles. We risk having the situation deteriorate to the point where solving the problem would eventually

become very difficult. There are, I believe, certain moments in the lives of nations, when people must be able to seize the opportunity. There is currently a desire in Quebec, which is felt everywhere, to look for an area of agreement among all the various leanings, which could serve as an anchor to our collective goals.

I fervently hope that your Commission will be able to define this common ground which is capable of uniting the great majority of Quebecers. By highlighting the elements of a national consensus, your Commission will enable Quebec to take a decisive step towards solving the constitutional problem. With the failure of the Meech Lake Accord, I believe that we still have not answered the infamous question, "What does Quebec want?"

Furthermore, though I do not want to take a categorical stand on a reality I am less familiar with, it seems to me that Canada is currently undergoing a phase of erosion which could even endanger its future. Personally, I grow more and more convinced that the presence of Quebec in

the Canadian federation is keeping English Canada from defining itself and identifying the values proper to it which could be used to hold the nation together over the next few years. This is why, in my opinion, it is important that this matter be settled quickly.

This leads me to my last idea. What must be done to bring things to a successful conclusion? It is a problem that has haunted us for such a long time. To my mind, it is up to Quebecers to resolve the impasse by making a decisive gesture. This gesture would be to make it clear that Quebec is prepared to create a sovereign country, even without an economic alliance with Canada, if, within a given time period, it proves impossible to negotiate such an association agreement.

I therefore suggest that your Commission recommend that the government hold a referendum on the following question: "Do you agree that Quebec should declare its independence if a sovereignty-association agreement cannot be reached with Canada within a period of negotiation of no more than two years?" I said two years but it could be a little more or a little less. What matters is that there is a time limit so that there is progress in the negotiations and they do not go on indefinitely.

The question that I am suggesting focuses on what is essential. Are Quebecers prepared to have Quebec become a sovereign and independent country? If they are not prepared, they have to resign themselves to living under the current federal system without any major changes – for history has shown that this system is incapable of fundamental change. If they are prepared, however, there is every reason to hope that Quebec will be able to maintain its close economic relations with its Canadian neighbours through an association agreement. For this is in their interest as much as ours. But even if this agreement should prove impossible, in the beginning at the very least, Quebec could continue to trade with the rest of the world, including Canada and the United States, under the GATT accord and other international agreements. It would not necessarily be isolated.



Daniel Latouche (December 20, 1990): For some time, the debate at the Commission and in general seems to focus on the best way of negotiating with the rest of Canada. This is an important discussion but seems secondary to me in relation to the main question, which is that of the best political status for Quebec. I will reformulate that question: Is this best political status as a Canadian province or as a sovereign State?

I noticed that many of you were discussing whether we need a referendum in June or July. You will probably be discussing the formulation of the question soon. That is a captivating topic, I agree, but it seems to me that you are counting your chickens before they are hatched. I think it is time to get back to what is at the heart of the debate: whether Quebec should be a Canadian province or a sovereign State. I noticed that it was easy to slip up in a debate on moral and economic superiority or the profitability of federalism. I think that is a false debate. In Quebec's case, it is not federalism with a capital F that we are choosing or rejecting, it is the federalism of a Canadian province. We are not making a choice in the abstract and there is no shame in this provincial status to my knowledge.

Basically, the argument in favour of sovereignty the one which seems to me to be the decisive one in any case, is that of the new international political and economic context and the best way of getting involved in it. This international context has been greatly discussed and, in general, I think that the whole has often been confused with the parts. A globalization process has been confused with the strategies of the players in this globalization. This globalization compels all players to review their positions, their strategies. This implies evaluating their strengths, their weaknesses, that is, what is called in today's jargon, "comparative advantages". In my brief, I list some of Quebec's comparative advantages, on which I base my position in favour of abolishing *political* protectionism, a position which largely falls in with the same arguments, over the abolition of *trade* protectionism.

My second point relates to English Canada. We have never talked so much about English Canada, in this august edifice than in the last few weeks. Probably we have never talked so much about it in Quebec either. There are two or three things that I would, like to bring up. An assertion which is often made is that English Canada will never agree to negotiate Quebec's sovereignty, or if it does, it may demand an enormous price before recognizing our new status. Another argument that we hear about English Canada's reactions is that English Canada is set up in such a way that only an official threat, the infamous hammering on the table by means of a referendum announcing a future separation, can motivate them to act, and to give us Meech Lake II, for example.

In my opinion, that is entirely wrong, and it is not only wrong, but ultimately it is insulting to English Canada. It is negotiating with Quebec. It has long been negotiating with Quebec, either in the Constitution, or in all the political systems that we have had and it will continue to do so. It negotiates with us because we control a territory

which, in their view, must not be permitted to fall into or pass into American hands. In my opinion, it is not just a question to them of economic profitability in negotiating with us, it is also a question of geopolitics.

Finally there seems to be an idea floating around that, once again, by hammering on the table by means of a referendum on sovereignty, it will be possible to make Canada move in the direction of a new federalism. I already said what I have concluded about our view of English Canada, but, simply from a strategic point of view, we should think twice before rushing into a referendum whose sole goal would be to make the other party submit. I would like to point out that this negotiating mandate strategy has already been attempted in Quebec. I was heavily involved in it and the most that can be said about it is that it did not produce the anticipated results.

In fact, the horse was dead even before it left the starting gate. But those who subsequently had to negotiate Meech Lake know very well the costs they had to bear for this abortive attempt of five or six years before. That is what made me say at the time, that the Meech Lake negotiation had been an amazing feat, one of the most beautiful negotiations in the history of negotiation, given the two and a half commitments that the negotiators left with. It must be said that, given the power relationship, they also started out at a disadvantage with respect to what they wanted to obtain. I would like to point out that during the Meech lake ratification process, the infamous threat: "If it does not pass, everything will fall apart", if I did not hear the Minister say it once, I heard him say it 55 times. It did not produce results because, basically, it had already been more or less attempted in 1980.

Let us admit that, even if the strategy works, and the rest of Canada, panicking with a knife at its throat, decides: "Ok, ok, you are serious this time, we will negotiate." Do you really think, especially those of you who have often negotiated, do you sincerely believe that such a negotiation will produce results? Do you negotiate well when you negotiate with a knife at your throats? Do you negotiate well, when you know that the other party did not want, for one reason or another, to go all the way in its arguments?

Do you believe that English Canada, to which this country also belongs, will forgive us for the emotional blackmail? We will have to live with the result of these negotiations. Do you believe that in granting Quebec two, three, seventeen, twenty-two additional powers, the Quebec problem will disappear? Do you really believe, even if support for sovereignty is reduced by half, if it drops again to a low of 30% do you believe that this country of renewed federalism will be liveable? And if the strategy does not work, and if English Canada forces

us to carry out our threat, do you really believe that we will be able to rush into sovereignty if everyone knows, and we most of all, that our first choice was something else? That does not seem to me to be a very good way of starting up in business, if I may use the metaphor.

I therefore arrived at the conclusion that there are costs and difficulties in changing the political status. That seems obvious to me. If there were not I suppose that we would have done it long ago. We are not incapable at this point.

But there are also costs in not doing anything and, above all, there are costs in not seizing the strategic opportunity when it presents itself. I would like to mention two of these strategic costs. First as Mr. Louis Bernard discussed a bit, when we turn down a strategic situation, an opportunity, a strategic loophole, often the other party's situation deteriorates or continues to deteriorate. There is a right time to buy a company. Often, one month later, there is no longer anything left to buy. Therefore, we are not the only ones who will have to bear the costs of passing up this opportunity, but the other party as well. We will have to live with Canada, either within or without so everything that is bad for English Canada is also bad for Quebec as a province or for Quebec as a country. English Canada will be our main economic partner.



Henri Brun (December 19, 1990): What I have to tell you is not very complicated, and can be summarized in three proposals. First, we must act, at least temporarily, as if Quebec were a sovereign State. This strikes me as the appropriate manner in which to broach and deal with the question of relations between Quebec and Canada at this point. Second, in the longer term, we must ensure that there are as many links as possible between Quebec and Canada but, in my opinion, as few common political structures as possible. Third, I think we must consult Quebecers through a referendum before launching discussions with Canada.

First, the question of acting as though Quebec were a sovereign State. Why should we do so? Simply because it strikes me that the current regime, the current constitutional regime is incapable of renewing itself and I feel it is pointless to expect anything significant of it. To solve the problem, even for a limited time, we must withdraw from the current constitutional regime. In the immediate future, this means avoiding at all costs what I dub the "Mulroney temptation", regardless of how congenial such a temptation may seem. We took "le beau risque" and the time for risk has passed. What is being

asked of us is that we launch negotiations to successfully change the manner in which we amend the Constitution, then amend the Constitution. I think we should let the matter drop.

In my opinion, the question at this juncture is to ascertain how, hypothetically, a sovereign Quebec should associate with Canada and not how Quebec should withdraw from the Canadian Federation or break up this Federation. It seems to me that we can summarize matters in this way in terms of broaching or dealing with the question. We must reason in terms of opting in, not in terms of opting out.

My second proposal, the most important one, is that we maintain in a more distant future as many links as possible with Canada with as few political structures as possible. What does that mean? Why should we do this? First, I think it should be noted that the question of Quebec-Canada relations is a broad one which, before it is a sectorial economic, social or other question, is a broad one of a political and legal nature.

It is not a question of ascertaining whether it is desirable to maintain as many links as possible with Canada and quality links at that. Rather, it is a matter of ascertaining what political and legal form such links should take. In my view, it is the "how" which is in question rather than the "what".

Our experience in the Canadian Federation reveals that, in light of our unique position in North America, our relations with Canada must henceforth take the form of *ad hoc* reversible agreements. They should not take the form of political structures because in my opinion central structures, when they are political, are driven by an intrinsic centralizing dynamic.

When these common institutions are political, they have autonomous powers or, if they do not have such powers, they quickly acquire them. They acquire more and more powers and do so constantly. They do so to such an extent that after some time we are no longer able to distinguish the creature from the creators. To some degree, this is what has happened in Canada. It seems to me that Quebec, given its unique position, if it really values its identity, cannot allow itself this risk.

Allow me to refer to the work of the Supreme Court of Canada and, above all, to the jurisprudence of the Supreme Court in recent years. I think that this jurisprudence reveals quite vividly the ineluctable, inevitable dynamic which exists when common institutions are political. It is generally thought in Quebec that Canadian federalism is frozen, does not change, and that is why it causes us problems. I do not think this is true. Canadian federalism does change. In recent years, it has changed a fair amount, especially under the aegis of the Supreme Court of Canada.

I maintain that, over the past ten years, the rules of Canadian federalism have been changed radically in some respects by the Supreme Court of Canada without our being aware of it and, obviously, the constitutional changes effected by legal means have the advantage or disadvantage, depending on your point of view, of being carried out discreetly. What the Supreme Court has done over the past ten years could never have been accomplished democratically by open constitutional amendments. I will give a number of examples.

First, the Supreme Court of Canada has resuscitated from its ashes the old theory of the national dimension. What is the theory of the national dimension? Well, briefly, it is a theory according to which the courts and the Supreme Court of Canada may, as a last resort, decide on a matter falling under provincial jurisdiction according to the Constitution. A question of this nature suddenly becomes a matter of federal jurisdiction. Why? Simply because, in the eyes of the Supreme Court, the question has a national dimension. You may well say; Yes, but is there at least a basis for exercising this power related to the national dimension? To all intents and purposes; No. What the Supreme Court tells us is that we must ask ourselves whether the provinces could adequately deal with the question. If the Supreme Court says no, that we cannot trust the provinces, the question is too broad, too important - like the environment, for example. There was a case involving the marine environment where the Supreme Court decided that pursuant to the theory of the national dimension, the question falls under federal jurisdiction.

A second example concerns trade. Until very recently, federative powers governing trade were shared in the following manner. Extraprovincial trade, that is interprovincial and international trade fell under federal jurisdiction. Trade within the provinces fell, in the past, under provincial jurisdiction, as a result of the jurisprudence of the legal committee of the Privy Council, replaced in 1949 by the Supreme Court. English Canada has never accepted the sharing of jurisdiction in the realm of trade. The question was the basis for its campaign to replace the Privy Council by the Supreme Court of Canada. The Supreme Court of Canada very recently decided that the federal government was perfectly qualified to legislate in the realm of trade, generally speaking.

The only indication the Supreme Court has given us is to ask itself whether the question of trade could be adequately dealt with by the provinces. If the answer is no, then it is the federal government that is qualified. The only limitation imposed by the Supreme Court with regard to this new sharing of economic jurisdiction is that the federal government may not legislate with regard to

a particular type of trade. The federal government may not legislate, for example, with respect to the apple trade, but it may legislate with regard to trade in general. The federal government could adopt a trade code tomorrow, there would be no problem with its doing so. That is, indeed, what it has done by recently adopting legislation governing competition.

More generally, what must be noted is the impact this had on provincial civil law, which is said to be one of the distinctive facets of the Province of Quebec. Also, in a general way, it must be acknowledged that this means that all Quebec policies, all provincial economic policies must fall within a set framework, even when internal matters of concern to the provinces are involved. Similar rules applied to communications; Extraprovincial communications fell under federal jurisdiction, while communications within the provinces fell under provincial jurisdiction. This was how it was. This jurisdiction was extended to businesses involved in communications. Extraprovincial communications firms were deemed to be federal businesses, which were not subject to provincial law. Until very recently, until 1989, in fact, it might at least be thought that it was not sufficient for one company to link up its facilities with those of another company in order to become an extraprovincial communications company falling under federal jurisdiction.

In 1989, the Supreme Court decided, that with respect to a provincial telephone company operating exclusively within a province, it was a public company, Alberta Government Telephones, simply because, of course the Alberta Government Telephones network is connected to other networks. What does this mean? This means that all communications businesses are deemed to be federal because all communications businesses are connected to networks which now extend beyond the provinces. This means that the following businesses are communications businesses: telephone; aeronautics; bus transportation; truck transportation; and hydroelectric transmission. We might well wonder whether Hydro-Quebec has simply become a federal business and whether the Hydro-Quebec Act has not become invalid.

I could give other examples but will limit myself to these. Quite simply, this is what inspires my conviction that we must avoid common political institutions. In this instance, it is the Supreme Court, and the Supreme Court is simply playing its role, no less, no more.

I will conclude in the following manner with regard to my third proposal. My third proposal dealt with the manner in which we arrive at the right answer, to ascertain whether what I or someone else is proposing is the right solution, and I said that it seemed to me that, to this end, before we launch negotiations or discussions

with Canada, we must consult Quebecers through a referendum and not simply undertake discussions by saying to our interlocutor that there might possibly be a referendum.



Charles Taylor (December 19, 1990): The purpose of this Commission was to redefine, in complete freedom, Quebec's relationship with neighbouring societies and its status within the continental framework. In my opinion, a distinct society, free to control its own destiny, is precisely one in which we go back to square one, as it were, and totally rethink what our status should be, instead of constantly taking our history and development into account and reconsidering our situation in the framework of the Constitution drawn up in the past. This means viewing Quebec's situation from a totally new perspective. It is the essence, I think, of the extraordinary consensus that has emerged since the death of Meech Lake. We did not agree and we still do not agree on the objectives or the solutions. But we do agree that the problem should be reconsidered from a totally new perspective. I think, therefore, that we should hold a debate, dealing initially with our goals. Which status or structure would we find most appropriate? I do not think we have really started discussing these issues yet. Instead, we have avoided them. I think it is time we discuss the fundamental question: What are we aiming for?

I would first like to tell you how I would answer this question. I would say that the best solution for us in Quebec is a relationship, a structure, a federal link with the other societies that are currently part of Canada. I see four reasons why this answer is better than others.

First, the French-speaking community has left its mark on the rest of Canada outside Quebec. One million Francophones live in this part of the country and, officially, its federal structures are already bilingual. A great many English Canadians have learned French. For those of us in the heart of French-speaking America, they constitute, as it were, a buffer, a potential ally in our struggle not only for survival but also for the development of our society in the future. It would be better to be surrounded by and allied with a society which, to a certain extent, is open to French, than to be isolated as the only Francophone community on this continent.

Second, we share with the rest of these societies a number of social programs and a system of economic management that differentiate us from the United States. For example, we have a health insurance system that is

very different from that of our neighbours. Since we share this continent with this economic giant, we will always be under a certain amount of pressure to bring our social programs and taxation level into line with those of our neighbours to the south. To maintain the programs we cherish, it would be preferable, once again, to be allied with other societies that have the same system.

Third, we want to maintain an open economic zone. Everyone is agreed on this point. Of course there are several ways of doing this. There is also sovereignty-association. But, in my opinion, a federal framework is a more reliable and stable framework for maintaining this economic zone.

Last, we must remember that here, in the northern part of the continent, we have a vast supply of resources, and Quebec must not renounce, from the outset, joint management of these resources in the future, a situation that could be highly profitable for us.

These are the four reasons why I am in favour of a federal solution. We know that our current federal structure has certain disadvantages, primarily because we were unable to obtain recognition as a distinct society, with all that this implies in the present situation. Therefore, we must talk not only about a federal structure in vague terms, but also about a new federal structure that would constitute a break with the past, that has the key feature of recognizing Quebec as a distinct society, with all that this implies, including the possibility of asymmetrical federalism where Quebec does not have the same role as the other parts of the federation. These are goals we should try to achieve.

What prevented this from happening in the present context? To summarize the situation very rapidly, I think that this can be explained by the fact that, throughout the rest of Canada, Canada has traditionally been viewed through a prism. I could even say that the rest of Canada, or most of it has continued to cling to a certain number of images that have no relation to reality: images of the Canadian mosaic, an image of Canada where all provinces are absolutely equal and uniform, the image of a "one-nation" Canada. There are all kinds of images that

have had a considerable impact on our English-speaking compatriots and that in the end, have prevented them from recognizing the reality of Quebec and from granting us our rightful place in this federation.

We will not be able to convince them by trying to make reforms and amendments on the basis of present-day Canada. Instead, we should propose something new and different. I suggest that Quebec propose, not that Canada be amended on the basis of its historical definition, but that we start from scratch and rebuild a federation in which Quebec is clearly recognized.

This is the substance, purpose and spirit of my brief. The question is: Can we make them negotiate on these terms? Frankly, I do not know. I am not sure. There is not anyone in this country who can predict the outcome of the identity crisis, so to speak, which English Canada is undergoing at the moment and which it will continue to undergo for some time. Problems arise not only in predicting our partner's answer to my proposal but for all the proposals now on the table, whether for sovereignty-association or full independence, since they require our partner's consent to a certain extent.

In conclusion, what I cannot accept is that we draw premature conclusions solely on the basis of the answers we presume English Canada will give, or that we dismiss the solution which I think is the best, namely, the federal solution. Let us not say: English Canada will not agree to this, so let us opt for independence; let us opt for sovereignty-association. On the contrary, if need be, let us let English Canada refuse the solution that is best for it and for us, if it lacks the foresight or is irresponsible or stubborn enough. But let's not do the job ourselves by rejecting the solution that would be best for us and our children. I have followed the discussions to date with some concern, since this basic question does not seem to have been addressed. Let us forget about our predictions about English Canada's answers and settle this question first: What in our opinion, is the best solution for us, as Quebecers? Let us try to find a way of negotiating this with the rest of Canada. ♦