

Constitutional Politics in Canada

RAINER KNOPFF
ANTHONY SAYERS

Although Canada is one of the world's oldest federal democracies, it is beset by cultural tensions that have recently threatened its disintegration. Credible separatist challenges from the province of Quebec, Canada's predominantly French-speaking jurisdiction, began in the mid-1970s and culminated in a 1995 Quebec referendum that came within a whisker (1.2%) of approving secession.

Quebec claims the status of a "distinct society" on the grounds that it represents one of Canada's two founding nations, meaning that the other nine provinces are subdivisions of the English-speaking nation. The other provinces advance a vision of equal provincial status instead. The result is a decentralizing dynamic.

The territorial version of "two nations" (i.e., Quebec and the rest of Canada) competes with the idea of a bilingual Canada in which individuals of either linguistic group can be equally at home throughout the country. Both interpretations of the French and English duality are in turn challenged by the idea of a multicultural Canada. At the same time, Canada's indigenous peoples have redefined themselves as "First Nations" entitled to self-government, perhaps even becoming a constitutional third order of government. Not to be outdone, Canada's increasingly vociferous municipalities are demanding similar "third order" status. For their part, Canada's three northern territories sometimes covet provincial status. Canadian women have built on the symbolism of "founding" or "first" nations by underlining the salience of "founding genders." Added to this volatile brew is a strand of individual, rights-based politics set against the politics of group identity.

Governing this diverse and sparsely populated country are federal and provincial parliaments exhibiting highly disciplined parties, dominated by their first ministers, and elected by plurality vote in single member constituencies. Because the effectiveness and influence of government members from less populous regions are difficult to discern under conditions of party discipline, opposition parties often attract regional protest votes. The electoral system further regionalizes parties by magnifying the impact of regionally concentrated votes, so that a party's share of seats in a particular region is often much higher or lower than its proportion of the regional vote. Electoral reform is thus a part of Canada's ongoing institutional debate.

So is parliamentary reform. Reducing party discipline in the House of Commons is a prominent proposal; reforming the federal Senate is another. Reformers want to make the Senate a more effective check on the House of Commons by transforming it from an appointed to an elected body with a more equal representation of the provinces.

From the 1960s through the 1990s this panoply of issues generated a growing wave of constitutional reform proposals. Beginning as an attempt to resolve the challenges posed by Quebec nationalism and separatism, the process grew into one of so-called mega-constitutional

politics, in which all of the conflicting interests and visions came to be reflected in ever more unwieldy proposals of omnibus constitutional transformation.

Out of the process of mega-constitutional politics came the Constitution Act, 1982, which added two important elements to the original 1867 constitution: 1) a fully domestic amending procedure, overcoming the need to have major amendments enacted by the British Parliament, and 2) a judicially enforceable Charter of Rights and Freedoms. The Charter was intended not just to protect rights and freedoms but also to provide a counterweight to the federal constitution's emphasis on territorial division by constitutionalizing values Canadians held in common.

The Constitution Act, 1982 did not, however, satisfy all voices in the raucous chorus of constitutional demands. Indeed, because it limited Quebec's assumed right to a constitutional veto, it entrenched individual rather than territorial bilingualism, and failed to decentralize federal powers. Quebec saw 1982 as a slap in the face, and was the only province to reject the 1982 reform.

Two subsequent rounds of major constitutional reform were launched – the Meech Lake (1987) and Charlottetown (1992) rounds. Meech Lake was motivated by the attempt to “bring Quebec back into the Canadian constitutional family,” but the effort engendered demands to deal, not only with Quebec's priorities for constitutional reform, but those of native peoples, women, minority groups, and other provinces. The subsequent process, which addressed all of the major demands for recognition and constitutional change, produced the Charlottetown Accord, which, when put to a referendum, failed to gain majority approval.

Included in the failed Meech Lake and Charlottetown accords were provisions to constitutionally recognize Quebec as a “distinct society” within Canada. Failure to achieve this reform contributed to the near success of the 1995 Quebec secession referendum. Secessionist flames then subsided, however, and constitutional fatigue has discouraged further adventures of the mega-constitutional sort.

Institutional reform has by no means fallen off the table, however. The focus has simply shifted from formal constitutional amendments – and especially complex packages of such amendments – to more piecemeal changes through parliamentary resolutions, legislation, negotiation, and judicial interpretation. Some of what was demanded during the Meech and Charlottetown episodes – e.g., recognition of Quebec as a distinct society, a *de facto* veto for Quebec over certain constitutional amendments, the progress of First Nations self-government agreements – has been achieved through these mechanisms. Some provinces have instituted a fixed-term election cycle, thus weakening one of the sources of first ministerial power, and are exploring systems of proportional representation.

The fact that these and other reform proposals occur singly and at the sub-constitutional order, rather than being bundled into mega-constitutional packages, appears to have lowered the temperature of institutional politics. Canada has come close to constitutional crisis in recent years. **The country now appears to have a very full and vibrant slate of institutional reform without the sense of impending demise.** There are no guarantees in politics, but Canada's

status as one of the world's oldest and most successful federal democracies may endure for some time.