THE FUTURE OF CANADIAN FEDERALISM

I. FACTS

In April 1987, Canadian Prime Minister Brian Mulroney introduced the ten Canadian provinces to the Meech Lake Accord, a proposed amendment to the Canadian Constitution. The proposal's key provision was the recognition of Quebec as a "distinct society," an attempt to induce Quebec to sign Canada's 1982 Constitution. Although the amendment was blocked by only two of the provinces, Newfoundland and Manitoba, Quebecers perceived the collapse of the Accord as a rebuff by the rest of the country. The death of the Accord in June 1990 led to the escalation of Quebec's demands well beyond those of Meech Lake and to a round of arduous negotiations between the first ministers in the months that followed.

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1 CAN. CONST. (Constitution Act, 1982).
2 Hubert Bauch, It's Our Future: Why Don't We Care; Why Unity Talks Turn Canadians Off, TORONTO STAR, June 29, 1992, at A1 [hereinafter It's Our Future]. Quebec refused to sign Canada's 1982 Constitution for fear its French language and way of life needed more protection from the dominant English-speaking culture. Canadian Officials OK 'Distinct' Status for Quebec, ATLANTA J. & CONST., July 8, 1992 at A8. In pursuit of such protection, Quebec has long sought more formal recognition as a "distinct society" within Canada. Additionally, "Canadian native peoples, the Indians and Inuit, have become much more aggressive in demanding similar recognition as distinct societies" since the 1990 failure of the Meech Lake Accord. Id.; Hugh Winsor, Quebec Raises the Stakes in Row with Canada, INDEPENDENT, Mar. 5, 1992, at 12; Joseph Devanthran, Chronology, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 17 (Canada section) (Albert P. Blaustein & Gilbert H. Flanz eds., 1991) [hereinafter CONSTITUTIONS]; Hubert Bauch, Quebec After Mulroney; National Unity; PM's Goodbye Spells Trouble, GAZETTE (Montreal), Feb. 27, 1993, at B3 [hereinafter Quebec After Mulroney] (noting [t]he trouble with the distinct-society concept was that nobody could ever really define it . . . Even so, a lot of Quebecers liked the sound of it . . . .'').
3 Winsor, supra note 2. The amendment required the ratification of all 10 provinces before June 23, 1990.
4 It's Our Future, supra note 2; see Winsor, supra note 2; Mary Janigan, Judgment Day; Turbulent Times Polarized the Country, MACLEAN'S, March 8, 1993, at 24. Besides formal recognition as a distinct society, Quebec demanded protection of its territory from native
As if to punctuate its demands for autonomy, the Quebec provincial legislature passed a law in June of 1991 requiring the federal government to hold a referendum on independence by October 26, 1992. A federal government proposal issued in March 1992 endorsed the recognition of Quebec as a distinct society but was rejected by Quebec’s Premier, Robert Bourassa, in that it did not recognize Quebec’s need to promote its own social and cultural development. At the time of the proposal, polls in Quebec showed support for independence stood at 50 percent.

While Quebec’s Premier rejected the March proposal as offering his province too little, English-speaking Canadian politicians attacked it for control and more weight in the Canadian Senate. The other provinces and national leaders wanted their own protections and to keep Quebec from getting too much control. See Edison Stewart, PM Calls Full-Scale Conference On Unity, TORONTO STAR, Aug. 13, 1992, at A13; Winsor, supra note 2; William Johnson, Price of Bringing Quebec to Table May Be Too High, TORONTO STAR, July 30, 1992, at A11.

Christine Tierney, Clock Runs Down for Canada-Quebec Deal, Reuters, Mar. 10, 1992, available in LEXIS, Nexis Library, Reuter File. A “Yes” vote in October, though, would not have mandated the secession of the province from Canada. Robert McKenzie, It Seems Bourassa Has Boxed Himself In, TORONTO STAR, Mar. 10, 1992, at A19. As voted through the Quebec National Assembly, Law 150, Article 1, Chapter 1 stated that if the results of the referendum were in favor of sovereignty, they would constitute a proposal that Quebec acquire the status of a sovereign state one year to the day from the holding of the vote. Id. Sovereignty is defined as “the supreme, absolute, and uncontrollable power by which any independent state is governed.” BLACK’S LAW DICTIONARY 1252 (5th ed. 1979).

Bourassa, who boycotted formal negotiations after the Meech Lake accord, wanted the recognition to have enough legal weight to override the guarantees accorded Quebec’s English-speaking minority as enshrined in the Charter of Rights and Freedoms. Id.; John Geddes, PM Pushes To Eliminate Provincial Trade Walls, FIN. POST, Aug. 13, 1992, at 4; CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms); see infra notes 54-60. When the Canadian House of Commons and Senate passed a joint resolution requesting British Parliament to patriate the Canadian Constitution, they also requested a Charter be entrenched to protect civil liberties. Parliament assented and the Charter of Rights and Freedoms was entrenched on April 17, 1982. The Charter purports to guarantee certain democratic rights, mobility rights, legal rights, equality rights, language rights, minority language education rights, and native rights. Devamithran, supra note 2, at 23. The federal proposal would have transferred some powers exercised by the federal government to Quebec and the other provincial governments, but in most cases it recommended power-sharing arrangements that fell short of Quebec’s demands. Winsor, supra note 2.

Tierney, supra note 5; support for Quebec independence in the public opinion polls has been as high as 70 percent, though many Quebecers have been reluctant to risk losing federal government support after having been hit hard by the recession. Winsor, supra note 2.
acceding to too many of the French-speaking province's demands. On July 7, 1992, however, the federal government and the premiers from the nine English-speaking provinces forged a new agreement to grant the French-speaking province its demands for special treatment in a last-ditch effort to preserve their national union. The federal government revised the "distinct society" clause in late July, and shortly thereafter Bourassa ended his two-year boycott of the Canada Round. Quebec's Premier then met with the other premiers for the first full-blown constitutional negotiations in two years.

These negotiations resulted in the Charlottetown Accord of 1992 (Accord). Among the provisions of the Charlottetown package were the recognition of Quebec's status as a distinct society (along with greater powers to preserve its francophone character), the replacement of the appointed Senate with an elected chamber comprised of equal membership from each province, and the recognition of the aboriginal right to self-government. The Prime Minister and provincial leaders decided to put the Accord to a national vote on October 26, 1992—the scheduled date for the referendum in Quebec on sovereignty—reasoning that the national vote would sidetrack the issue of secession in Quebec. The dominant sentiment among Canadian citizens, nevertheless, was that too much had been surrendered to the demands of others: the answer to the October referendum was a resounding "no."

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8 Tierney, supra note 5.
9 Canada's Future Now In Quebec's Hands, STAR TRIB., July 10, 1992, at 16A [hereinafter Canada's Future]. The Constitutional Affairs Minister, all provinces except Quebec, both territories (Northwest and Yukon) and the four native groups agreed to the tentative July 7 deal, but did not sign any binding written agreement. Stewart, supra note 4. The deal also resolved several long-standing constitutional issues by permitting native self-government, giving each province equal representation in the national Senate, and dismantling provincial trade barriers. Canada's Future, supra.
10 Sarah Scott, Premiers' Launch Political Suicide: Parizeau; Distinct-Society Deal Could Erode Bill 101; Shaping the Future, GAZETTE (Montreal), July 31, 1992, at B1.
11 Geddes, supra note 6.
12 Janigan, supra note 4.
14 Waller, supra note 13.
15 Id. Besides Quebec, Nova Scotia, four Western provinces, and the Yukon Territory also voted against the Accord. Clyde H. Farnsworth, No Vote, No End to Quebec Dispute, HOUS. CHRON., Oct. 28, 1992.
Initially, the October outcome left the constitutional negotiations in a stalemate; the creation of a compromise agreeable to everyone seemed impossible. Canadian politicians promised instead to attend to the nation's lagging economy, with no thoughts of resuming constitutional bargaining in the foreseeable future. For the first time in recent years, national unity ceased to be a major issue both in the media and among academics.

Less than six months after the October referendum, however, the constitutional issue is being raised once again. Following the public announcements of Premier Bourassa's resumed bout with cancer and the resignation of Prime Minister Mulroney announced February 24th, came the declaration of the Quebec government that it was ready to resume negotiations with the other provinces. Rather than viewing the Meech Lake and Charlottetown accords as failures, the Quebec government sees them merely as references for the next round of constitutional negotiations.

As of this writing, the federal government has yet to respond to Quebec's offer. In the past, however, the Prime Minister has warned that the federal government will not return to the constitutional issue at least until there is

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17 Farnsworth, *supra* note 15. The economy currently has 1.5 million Canadians out of work. *Id.*


19 Goar, *supra* note 16.

20 David Bercuson, *In Canada We Can't Seem to Agree*, CALGARY HERALD, Mar. 6, 1993, at A4.

21 Peter Benesh, *Cancer Threatens Canadian Unity*, S. F. CHRON., Feb. 1, 1993, at A7. "Bourassa revealed in mid-January that the malignant melanoma he thought he had beaten 2 years ago is back." *Id.*

22 *A Chronology of the Mulroney Years In Power*, TORONTO STAR, Feb. 25, 1993, at B1. The Prime Minister will remain in office until June, when his party (the Tory or Progressive Conservative Party) will hold a leadership convention to succeed him. Joan Bryden, *Campbell Soars Over Chetien; Poll Shows She's Favored 2 to 1 as Choice for PM*, GAZETTE (Montreal), Mar. 22, 1993, at A1.


24 *Id.*
a change in players. But the Prime Minister is stepping down and a federal election will be held this year. Bourassa is preparing to depart and the separatist Parti Quebecois (PQ) are readying for a provincial election in 1994 (followed by a referendum on outright independence by June 25, 1995). Thus, a change in players is imminent.

II. CONSTITUTION VERSUS INDEPENDENT STATE: QUEBEC'S CHOICE OF LAW AND GOVERNMENT IN LIGHT OF PROVINCIAL HISTORY AND INTERNATIONAL LAW

A. Quebec as a Member of The Canadian Federation

1. Constitution Act of 1867

The Constitution Act of 1867 (Constitution Act) established Canada as the first quasi-independent dominion within the British Empire. Ontario and Quebec were divided into two provinces, although they had been united as one colony since 1840. The Constitution Act united the provinces of New Brunswick, Nova Scotia, Ontario and Quebec into the new nation, Canada. Under the Constitution Act, the Canadian constitutional system

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26 Quebec After Mulroney, supra note 2. "The Backroom wisdom in Quebec City holds that it is only a matter of time before Bourassa takes his leave to concentrate on his fight against cancer." Id.

27 The Parti Quebecois (PQ), founded in 1968 and currently led by Jacques Parizeau, leads the separatist movement in Quebec by campaigning for the separatist cause in provincial elections. The Bloc Quebecois, led by Lucien Bouchard, campaigns on the federal level. Despite separate leaderships, the parties support one another and are both working towards the same goal. Benesh, supra note 21.

28 See id.

29 CAN. CONST. (Constitution Act, 1867).


31 CAN. CONST. (Constitution Act, 1867) pt. II (Union) § 6.

32 CAN. CONST. (Constitution Act, 1867) pt. II (Union) § 5; James G. Matkin, Chronology, in CONSTITUTIONS, supra note 2, at 4.
was based upon two principles: the Westminster parliamentary system and a new confederative mechanism. This system divided powers between the central government and the various provincial governments.

The French Canadians were uneasy that the Constitution Act made French Canada part of a larger nation, but were confident that the guarantees built into the new constitution, together with the return of the provincial capital to Quebec City, would help them preserve their language, religion, and cultural values. Over the years, however, French Canadians "remained concerned about their future as a French-speaking society within an increasingly English-speaking North America." The people of Quebec became increasingly "aware of the difficulties of preserving a distinct French-speaking culture of six million on a continent where more than 200 million people speak English."

Although previously Quebec had been a largely rural province suspicious not only of English-speakers, but of modernization in general, in 1960, the Quebec Liberal Party came to power intent on change. Under the leadership of Jean Lesage, the Liberals used all the governmental power at their disposal to improve the educational system, create jobs for the growing French middle class, and ensure opportunity and economic power for French Quebecers. So far-reaching were the Liberal’s reforms, the process they

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33 Under the Westminster system, the Canadian Senate, like the House of Lords, is removed from the electoral contest. Efrat, supra note 30, at 23; CAN. CONST. (Constitution Act, 1867) pt. IV (Legislative Power) § 18.

34 CAN. CONST. (Constitution Act, 1867) pt. VI (Distribution of Legislative Powers). The new mechanism was an attempt to avoid what was perceived as the main weakness of the American Constitution: the Tenth Amendment’s reserving unspecified powers to the states, which allegedly contributed to the Civil War. Efrat, supra note 30, at 22.

35 CAN. CONST. (Constitution Act, 1867) pt. IV (Legislative Power) pt. V (Provincial Constitutions); CONSTITUTIONS, supra note 2, at 4.


37 Id.

38 Id.

39 For Want of Glue; From New France to New Quebec, ECONOMIST, June 29, 1991, at 1 [hereinafter For Want of glue].

40 Id.

41 Id.; David Bercuson, Constitution Worked Well for Quebec, CALGARY HERALD, Nov. 6, 1992, at A4.
set in motion has come to be called the "Quiet Revolution." The Liberals began to demand a special constitutional status for Quebec. Lesage's demand for special status was later taken up by his successor, Daniel Johnson, who thought Quebec should be equal in stature, if not power, with Ottawa—home to the federal government. This demand was the ultimate expression of the "two-nation" theory: the idea that Canada was a dual nation comprised of Quebec and English-speaking Canada.

In the mid-1960's, the Royal Commission on Bilingualism and Biculturalism recommended that if Canadians were to live in harmony, Canada had to be a "nation of nations," with "unity in diversity" as the national motto. Such sentiments became law in 1969 when Canada became officially bilingual under the Official Languages Act. Under the Royal Commission's recommendation, English and French were formally declared the official languages of the Parliament of Canada, the federal courts, the federal government, and the federal administration. Then in 1971, the government adopted a multicultural policy and Canada became a "nation of nations.

Multiculturalism was supposed to foster national unity. Just nine years after the multicultural society was announced, however, Quebec found itself

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42 For Want of Glue, supra note 39. The main effect of the Quiet Revolution was to turn the province from a society of French-Canadians driven by fear of cultural obliteration into one of "Quebecois" driven by economic assertiveness, and by becoming "masters in their own house." This widely recognized craving for self-determination expressed itself in the trappings and symbols of nationhood: the provincial legislature became the Assemblee nationale, Quebec missions abroad started flying the Fleur-de-lis instead of the Maple Leaf, and Quebec began participating as a "sovereign" member in international conferences of the Francophonie. Efrat, supra note 30, at 27-28.

43 Bercuson, supra note 41.

44 Id.

45 Id.


47 Official Languages Act, R.S.C. Ch. 0-2 at 1 (1985); In 1974, the Official Language Act of Quebec was given Royal Assent and French was thus declared the official language of Quebec. This Act was repealed in 1977, but was subsequently replaced with a new bill (Bill 101) that basically achieved the same result. Que. Rev. Stat. ch. c-11 (1977); Efrat, supra note 30, at 26; Ellen Walsh, Chronology, in CONSTITUTIONS, supra note 2, at 9.

48 Efrat, supra note 30, at 26.

49 Sibley, supra note 46.

50 Id.
heading towards a referendum in 1980 that could lead to the breakup of Canada. In an effort to steer the province away from secession, then Prime-Minister Pierre Trudeau promised Quebec “renewed federalism” if the referendum of the separatist PQ was rejected. Quebecers voted to remain with Canada.

2. The Constitution Act of 1982 and the Charter of Rights and Freedoms

Two years later, the Constitution Act of 1982 effected the patriation of the Constitution Act of 1867 and the subsequent enshrinement of the Canadian Charter of Rights and Freedoms. The Charter, however, in no sense interfered with the separation of powers between the government of Canada and the governments of the provinces set forth in the Constitution Act of 1867. Rather, the Charter was directed equally to both levels of government and guaranteed certain rights and freedoms for the benefit of the citizenry. Further, the Charter provided a mechanism for protecting the citizenry from incursions by the two separate levels of government into these protected rights and freedoms. Each level of government could, however,

51 Carol Goar, *P.M. Echoes Trudeau But Times Have Changed*, TORONTO STAR, Feb. 16, 1991, at D2. In May of 1980, a referendum was held in Quebec on the question of whether or not Quebecers should give their provincial government permission to negotiate “sovereignty-association.” Though the government in Quebec was Separatist, Quebecers voted for Canada. David Bercuson, *Canada Must Put Its Agony Behind*, CALGARY HERALD, July 24, 1992, at A4; *Minister Responsible for Constitutional Affairs at the Annual General Meeting of the Canadian Manufacturers’ Association at the Harbour Castle Westin Convention Centre*, CAN. NEWswire LTD., June 12, 1992, at 1 [hereinafter Minister Responsible].

52 “Renewed federalism” was broadly understood as being synonymous with new powers for Quebec in the federation. Bauch, *supra* note 2.

53 *Minister Responsible, supra* note 51.

54 CAN. CONST. (Constitution Act, 1982).


58 CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms) § 24; *McKinney at* *15.*
still legislate and act with respect to all subject to its jurisdiction, provided that its actions were not inconsistent with the Charter.\textsuperscript{59} In adopting the Charter, Canada took its first step towards creating a political culture oriented toward individual rights rather than the Canadian tradition of collective rights.\textsuperscript{60}

Quebecers, however, felt betrayed in that the Constitution Act of 1982 failed to include any gain of the sort promised for Quebec by Trudeau.\textsuperscript{61} Moreover, the subsequent introduction of the Charter was perceived by the political elite as an infringement of the Quebec National Assembly's powers to enact laws to ensure the survival of the French language in the province;\textsuperscript{62} eventually, the rest of the province understood why. After the Assembly passed Bill 101,\textsuperscript{63} a law designed to promote the use of French in Quebec through unilingual signs, several lower courts ruled that the signs provision violated both the Quebec and Canadian Charters of Rights.\textsuperscript{64} While the rulings pleased Quebec's anglophone minority, it outraged the francophone majority.\textsuperscript{65} Thus, many Quebecers saw the new Constitution

\textsuperscript{59} CAN. CONST. pt. I (Canadian Charter of Rights and Freedoms) § 33 (Constitution Act, 1902); McKinney.  
\textsuperscript{60} Sibley, supra note 46. Collective rights, in contrast to individual human rights span a spectrum from simple freedom of association to a variety of special remedies and protections. Groups may assert the right to their own schools or to make their language the official language of a given area; they may seek special political rights or to block the entrance of other nationalities into their homeland. "The ultimate collective right, of course, is the right to create an independent state." Robert Cullen, Human Rights Quandry: The Costs of Vagueness, 71 FOREIGN AFF., 79 (1992).  
\textsuperscript{61} Bauch, supra note 2.  
\textsuperscript{62} Id.; see note 57 and accompanying text.  
\textsuperscript{63} R.S.Q. ch. c-11 (1977).  
\textsuperscript{64} CAN. CONST. (Constitution Act, 1982) pt. 1 (Charter of Rights and Freedoms); Alliance Quebec Offered To Help Anyone Wanting To Fight Sign Law, GAZETTE (Montreal), May 31, 1992, at 1 [hereinafter Alliance Quebec]; When Countries Splinter, ECONOMIST, June 13, 1992, at 11; see also Devamithran, supra note 2, at 15. The Supreme Court agreed, and the controversial section was struck down in 1988. Quebec Sign Ruling Sparks Furor, FACTS ON FILE WORLD NEWS DIG., Dec. 23, 1988, at 957 D3. [hereinafter Quebec Sign Ruling].  
\textsuperscript{65} Id. Quebec (Bourassa) then invoked the "notwithstanding clause" of the Charter, which allows a province to override most rights in the Charter provided they do so expressly after a vote in the legislature. The legislature subsequently passed Bill 178 - a law that banned most outdoor non-French signs. Premier Bourassa's action was the first time the clause was utilized to overturn a court ruling. Id. "Resorting to the loophole by Bourassa's liberal government was a clear instance of pandering to Quebec nationalists - - and enraged English speakers within and outside the province." Benesh, supra note 21.
and Charter as having very little to offer. In their minds, secession remained the only option.

In 1985, however, a new government came to power in the province, one whose leader rejected separation and saw Quebec’s future in issues Quebecers wanted to see addressed. In addition, Brian Mulroney’s election as Canada’s 18th prime minister brought civility to the Ottawa-Quebec relationship after a decade of confrontation. Prime Minister Mulroney met with the other premiers in 1986, and all agreed that their top constitutional priority was to bring about Quebec’s full and active participation in the Canadian federation. This, in turn, led to the 1987 gathering at Meech Lake.

B. Secessionist Self-Determination

1. Questions and Issues Accompanying Secession

With the Parti Quebecois set to vote on independence in 1995, secession has once again become a topic of both concern and debate for Quebec, Canada, and other countries. The presence of a strong separatist movement is a matter of acute concern to the unified State which will likely be dismembered by the secession of the disaffected province. Moreover,

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66 Minister Responsible, supra note 51. In particular, Quebec wanted to see addressed the issues of preserving its language and culture and recognizing the province as a distinct society. See supra note 2 and accompanying text (discussing Quebec’s demand for distinct society status).

67 The Canadian federal government is located in the province of Ottawa, and the two terms are often used interchangeably.

68 Janigan, supra note 4; It’s Our Future, supra note 2. Prime Minister Mulroney built a broad and unusual coalition that brought together the Tory (Progressive Conservative) party’s traditional constituency in the Canadian West with a massive bloc of voters in his home province of Quebec. “Mulroney’s Tory Party accommodated hard-line, right-wing Westerners who wanted little government and less taxation, medieval social policies, and no state support for bilingualism and multiculturalism. The party also comfortably housed Red Tories who were pragmatic about economic matters but opposed the death penalty, favored easy and publicly financed access to abortion, and promoted bilingualism.” John Cruickshank, Star Search, Tory-Style, CHRISTIAN SCI. MONITOR, Mar. 10, 1993, at 19.

69 Minister Responsible, supra note 51. The agreement was formally issued as the Edmonton Declaration of 1986. Id.

70 See supra notes 1-4 and accompanying text (discussing the Meech Lake Accord).

legal arguments for a "right" to secede may raise fundamental issues regarding the internal constitutional framework of the country. In addition, such a movement may also be a matter of practical and legal concern for the international community as a whole. The "tendency of modern secessionist movements to seek to establish the legal legitimacy of their claims by invoking the international doctrine of self-determination raises thorny legal problems relating to the applicability of this doctrine to minority groups within unified States."

2. Legal Development of the Self-determination Concept

The "self-determination" concept in international legal theory and jurisprudence advocates the idea that a homogenous people has the "right" to determine its own destiny as a distinct sovereign nation, or the "right" to maintain its own national traditions within a larger political entity. Three interconnecting subtopics are involved: external self-determination (determination of international status); internal self-determination (selection of a form of government); and the methods by which these two decisions are made.

Historically, the original doctrine of self-determination put forth by President Woodrow Wilson was deficient in its definition of the "self." Because any "self" was distinct from other "selves" inhabiting the globe, determining a group's distinctness seemed a logical starting point. A group's distinctness could be evidenced by characteristics that distinguished the group from the ambient population. These characteristics could

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72 Id. "The unbridled assertion of collective rights, most often expressed as an aspiration to national self-determination, has become a major threat to global stability." Cullen, supra note 60. See infra note 178 and accompanying text (discussing Yugoslavia as an example of the disastrous potential of the assertion of collective rights).
73 BUCHHEIT, supra note 71, at x;
74 Jordan J. Paust, Self-Determination: A Definitional Focus, in SELF-DETERMINATION, supra note 30, at 11.
75 See MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 37, 29 (1982).
76 Id. at 18. The Wilsonian doctrine, "let the people decide," failed to recognize that somebody had to decide who "the people" were--i.e., "who is the 'self' to whom the right of self-determination attaches?" Id. at 2; BUCHHEIT, supra note 71, at 9.
77 BUCHHEIT, supra note 71, at 9.
78 Id. at 10.
include elements of religion, language, race, and geography.  

Today, the United Nations Charter cites development of "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" as one of its four main purposes. Initially, the Charter failed to include any general right of self-determination that required a viable international legal system in which it could be exercised. An "edifice" of practice nonetheless evolved in the General Assembly in which, increasingly, full external self-determination—preferably resulting in independence—was viewed as an imperative and immediate goal for all peoples "under colonial or alien domination." 

Two United Nations Resolutions also contributed to the development of the self-determination principle. In 1960, the General Assembly adopted Resolution 1541, which stated that a full measure of self-government could be reached either by emergence as a sovereign independent state, free association with an independent state, or integration with an independent state. The Resolution did not propose any conditions for limiting the grant and receipt of independence, but strictly regulated the latter two alternatives.

The more famous Resolution 1514, the Declaration on the Granting of Independence to Colonial Countries and Peoples, represented an attempt to revise the U.N. Charter by providing that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The context in which the right to self-determination was declared, however, demonstrated an intention to confine it to the following peoples: those still "dependent" (in that they inhabit trust territories, non-self-governing

79 Id.
80 U.N. CHARTER arts. 1-73. See Yonah Alexander and Robert A. Friedlander, Introduction in SELF-DETERMINATION, supra note 30 at xiv; see Paust, supra note 74 at 3-4.
81 POMERANCE, supra note 75, at 10.
82 Although General Assembly Resolutions are non-binding, they may become customary law. Id. at 64.
84 POMERANCE supra note 75, at 10.
85 Id. at 64.
87 Id.; POMERANCE, supra note 75, at 11.
territories, or other territories which have not yet attained independence) and those subjected to "alien subjugation, domination and exploitation." Thus, the U.N. overcame the earlier "Wilsonian" era's definitional problem by opting for territorial, rather than ethnic, criterion.

Resolution 1514 is the foundation of what is sometimes known as the "New U.N. Law of Self-Determination" (New U.N. Law). The New U.N. Law "consists of a series of explicit and implicit assumptions regarding the status, scope, and application of the 'right' of self-determination and the competence of U.N. organs . . . to implement the 'right.'" These assumptions have been deduced from the attitudes adopted in connection with certain general pronouncements of the U.N., as well as from the positions assumed by the U.N. in specific cases where the issue of self-determination was raised. Although a majority of U.N. members acknowledge the existence of a New U.N. Law, the exact content of the law is frequently a topic of debate.

The U.S. position on the theory is equally as vague. In the Helsinki Accord of 1975, the United States endorsed the consensus that "participating states will respect the equal rights of people and their right to self-deter-

88 POMERANCE, supra note 75, at 14.
89 Id. at 18. Proponents of the New U.N. Law seek to separate out the legitimate, non-colonial States and movements from those of a "colonial-racist-neocolonial" nature. On the basis of this distinction, proponents "have presumed to allocate definitively rights and obligations relating to self-determination and other Charter principles." Id. at 74.
90 Id. at 12.
91 Id. at 13. For example, such pronouncements as the 1970 Declaration on Friendly Relations and the 1974 Consensus Definition of Aggression presented some of the U.N.'s attitudes on the self-determination issue. Id. To illustrate how the U.N.'s position has been determined from specific cases, the savagery of the Pakistani army in 1971 was influential in shifting the U.N.'s opinion to the side of Bangladesh. To the extent the Kurds in Iraq, and the Biafrans in Nigeria suffered similar mistreatment, they each received support for their cause for a legitimate secession. BUCHEHT, supra note 71 at 213.
92 POMERANCE, supra note 75 at 12. International legal scholars continue the debate as to who gets the right to self-determination under the New Law and also as to what the acceptable methods of self-determination actually are. See id. at 24, 28.
93 Id.
mination."\(^{95}\) Although the act left deliberately vague what the right to self-determination meant, the Conference on Security and Cooperation in Europe\(^{96}\) has since gradually begun to define it.\(^{97}\) In 1990, the Confeder ate declared that it is strictly up to individuals, not governments, to decide whether they are members of a minority.\(^{98}\) Although the definition process has stopped well short of declaring that any minority has the right to political autonomy or statehood, the tendency has certainly been towards expanding the area of collective rights.\(^{99}\) With little debate, the United States has thus far followed the trend.\(^{100}\)

Thus, Quebecers faced (and still face) one basic choice: remain with the Federation or leave and declare independence. Dissatisfied with the Canadian Constitution, and uncertain of the implications of secession, Quebec joined the other provinces in attempting to rectify the situation through constitutional reform—first at Meech Lake, then at Charlottetown.

III. ANALYSIS

A. Negotiations in Charlottetown

The Canadian Round negotiations attempted to respond to the collapse of the Meech Lake Accord and the subsequent rising tide of Quebec separatism.\(^{101}\) Prime Minister Mulroney sought to make specific changes in the Canadian constitution that would accommodate not only Quebec, but also the other parts of Canada.\(^{102}\) In particular, he attempted to balance "Quebec's demands against those of other unhappy groups—Canada's natives wanting self-government, and the outlying provinces desiring better representation

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95 Cullen, supra note 60, at 83-84.
96 The Conference was established in July, 1973 as a continuing series of meetings and has governments of 51 countries as its members. YEARBOOK OF INTERNATIONAL ORGANIZATIONS 317 (Union of International Associations ed; 1992).
97 Cullen, supra note 60, at 84.
98 Id.
99 Id.
100 Id.
101 See supra notes 2-4 and accompanying text (discussing Meech Lake and its aftermath).
102 See Minister Responsible, supra note 51; see also Tierney, supra note 5.
..." in the form of an elected and stronger upper house of Parliament.\(^{103}\) This, of course, was no easy task.

New hope for success emerged, however, when Quebec Premier Robert Bourassa decided to return to the full bargaining table last summer as a result of informal negotiation sessions and a reworded "distinct society" clause.\(^{104}\) The language of the proposed clause required the Canadian Constitution and the Charter of Rights and Freedoms to be interpreted in a manner consistent with certain fundamental characteristics, one being that "Quebec constitutes within Canada a distinct society which includes a French-speaking majority, a unique culture and a civil law tradition."\(^{105}\)

Thus, the new clause made the Constitution more appealing to Quebec. True, the Canadian Constitution has long recognized Quebec's distinctive language and culture, and the province's use of the Napoleonic Code in its civil law.\(^{106}\) But Bourassa wanted formal recognition of Quebec's distinct society to have enough legal weight to override the guarantees accorded the English minority in Quebec in the Charter.\(^{107}\)

In addition, the new clause reduced the significance of an earlier July, 1992 proposal that would have committed all provincial governments to the "vitality and development" of official language minorities—English in Quebec and French outside Quebec.\(^{108}\) Though the new clause at first appeared to obligate provincial governments in much the same way as the

\(^{103}\) Tierney, supra note 5. The so-called "Triple-E Senate"—Elected, equal, and effective—would be roughly modeled on the U.S. Senate. This body would be popularly elected, would be composed of an equal number of representatives from all provinces and the territories, and would have the power to initiate and approve legislation originating in the Commons. The Constitutional Debate, supra note 36.

\(^{104}\) See Scott, supra note 10; Winsor, supra note 2 (discussing Bourassa's boycott of negotiations).

\(^{105}\) William Johnson, Price of Bringing Quebec to Table May Be Too High, TORONTO STAR, July 30, 1992, at A11. The words "within Canada" were restored after the omission of these words in a previous proposal caused a national outcry. Id.; see Geddes, supra note 6 and accompanying text (discussing the Canadian Charter).

\(^{106}\) Winsor, supra note 2; see also James Matkin. Chronology, in CONSTITUTIONS, supra note 2.

\(^{107}\) Winsor, supra note 2.

\(^{108}\) Johnson, supra note 105; Terrance Wills, Distinct Division; Little Support for New Canada Clause, GAZETTE (Montreal), Aug. 1, 1992, at A9.
July proposal, the appearance was merely an illusion. Under the new clause, governments would have been bound to protect only existing linguistic rights, which, as Quebec has already shown by its language laws, are easily flouted.

Premier Bourassa, however, did not have the support of most other premiers for the new clause being pushed by the federal government. Critics objected to the clause because it strengthened Quebec’s hand in promoting its distinct francophone society and weakened the protection for the official-language minorities. In 1990, similar opposition in the other provinces contributed to the collapse of the Meech Lake Accord.

In addition, Bourassa brought other issues back with him to the bargaining table. For example, on the issue of Senate Reform, the Premier initially opposed having a Senate with equal representation from each province, as that would effectively “slash Quebec’s representation from twenty-three percent to about nine percent.” A later proposal, however, would have restored much of Quebec’s and Ontario’s weight in the upper house. The four provinces with more than two million people—Ontario, Quebec, British Columbia and Alberta—would have each secured twenty-four seats, and all other provinces would have obtained eight.

Also, the Premier sought changes to the provisions of the July deal regarding native self-government. The province was concerned that

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109 The new clause still provided for the provincial governments’ commitment to the vitality and development of official-language minority communities and to protecting their linguistic rights as well. Scott, supra note 10.

110 Johnson, supra note 105.

111 Id. Although Alliance Quebec thought the new clause weakened protection for the English-speaking in Quebec, Parti Quebecois leader Jacques Parizeau took the opposite view that the clause could still be challenged, just as it was in the Supreme Court in 1988. Scott, supra note 10; see Quebec Sign Ruling, supra note 64.

112 Wills, supra note 108.

113 Id.

114 Id.


116 Stewart, supra note 4.

117 Id.

118 Stewart, supra note 115.
large chunks of its territory could be lost to native control. Native leaders, on the other hand, accused the federal government of betraying their trust by offering a constitutional deal behind their backs to get Quebec to return to the negotiating table.

Also under the July 7 tentative agreement, the Yukon and Northwest territories could have become provinces by the consent of the federal Parliament alone. In the end, Bourassa accepted a later proposal, where the federal government would require the consent of all the regions before allowing the territories to assume provincial status. Premier Bourassa decided to accept this indirect, "political" veto over the creation of new provinces, rather than hold out for a more secure veto embedded in the Constitution, as was offered under the Meech Lake Accord.

Did Bourassa make too many concessions, or did he ask for too much? Evidently, each view had its own group of supporters. Together, they rejected the package.

B. The Charlottetown Accord: Why Canadians Said “No”

In spite of the collective efforts of the provincial leaders, and in spite of all the re-negotiating and compromising, the October 26, 1992 referendum resulted in a decisive rejection of the Charlottetown Accord. Although

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119 Id. Although self-governing at the time of their first contact with European society, Canada’s aboriginal citizens - the Indians and Eskimos - have been governed under the Indian Act since 1876. The natives’ increasing demands for self-determination finally lead to a new recognition and urgency to secure the legitimate place of Canada’s aboriginal peoples within the Canadian Federation. Efrat, supra note 30, at 38.

120 Wills, supra note 108. “Section 35.1 of the Constitution Act of 1982 commits governments to the principal that aboriginal peoples will participate in discussions relating to amendments of the Constitution which relate directly to them.” CONSTITUTIONS, supra note 2, Canada Supplement at 6.

121 Johnson, supra note 105. The two territorial governments objected to the 1982 constitutional provision which requires the consent of Parliament and seven provinces, including at least 50 percent of the population of Canada, before they can assume the provincial status they desire. Id.

122 Id. Wills, supra note 108.

123 Johnson, supra note 105. Under the Meech Lake agreement, each province was given a veto over the creation of future provinces. Id.

124 For a detailed discussion of the negotiation process, see supra notes 8-16 and accompanying text. See Also The Referendum Vote By the People of the No was Not the Failure of Politics Itself, GAZETTE (Montreal), Nov. 1, 1992, at B3 (hereinafter The
the "No" voters saw victory together, they apparently were united only in their rejection of the agreement.\textsuperscript{125}

In late August of 1992, Bourassa suffered a tremendous setback in his efforts to sell the Charlottetown Accord.\textsuperscript{126} Media organizations outside Quebec published the transcript of a recorded conversation between Andre Tremblay, one of Bourassa's advisers during negotiations, and Diane Wilhelmy, Quebec's Deputy Minister for Intergovernmental Affairs.\textsuperscript{127} During the conversation, Tremblay and Wilhelmy discussed how, according to Tremblay, Bourassa had "caved in" during the negotiations.\textsuperscript{128} With his credibility seriously damaged, Bourassa spent the majority of the referendum campaign\textsuperscript{129} fighting off accusations resulting from the "Wilhelmy Affair."\textsuperscript{130}

At this time, however, "No" voters clearly remained outside the political mainstream.\textsuperscript{131} Thus, when the Reform Party of Canada\textsuperscript{132} declared its

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\textbf{Referendum}. "[O]verall, 54 per cent of Canadians vetoed Charlottetown. Opposition was especially strong in Alberta (60 per cent), Manitoba (62 per cent), and British Columbia (68 per cent). Interestingly, the total vote against the Accord in Quebec was only about 56 per cent—and that figure includes many who disliked the deal but oppose secession as well, such as the federalists aligned with Trudeau." Waller, supra note 13.
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\textsuperscript{125} The Referendum, supra note 124.

\textsuperscript{126} See Barry Came et al., Defining Moments; Four Performances That Shaped the Referendum of 1992, MACLEAN'S, Nov. 2, 1992, at 17.

\textsuperscript{127} Id. An injunction prevented a local radio station from airing the recorded conversation. \textit{Id}.

\textsuperscript{128} Id.

\textsuperscript{129} The referendum campaign, five weeks of politicking, officially began on Sept. 18, 1992. Came, supra note 126.

\textsuperscript{129} Id.; \textit{Analyzing the Results in Quebec}, MACLEAN'S, Nov. 2, 1992, at 17 [hereinafter \textit{Analyzing}]. Also damaging were the comments of British Columbia Constitutional Affairs Minister Moe Sihota. Sihota recounted in great detail "how the premiers had ganged up on Quebec and stopped Robert Bourassa in his tracks." \textit{Id}. Lastly, in an effort to shift the focus in Quebec away from Bourassa's skills as a negotiator and onto the economic terrain, the Prime Minister himself made somewhat of a blunder. During a speech in Quebec, the PM picked up a sheet of paper and ripped it in two, saying that a "No" vote would destroy everything that was gained in the negotiations at Charlottetown. The media linked the act to another part of the speech in which the PM warned that a "No" vote "would start the dismantling process in Canada." Thus, "the incident reinforced an image that federal officials had done their best to dispel; that of Mulroney as a bullying, threatening prime minister." Came, supra note 126.

\textsuperscript{130} Id.

\textsuperscript{131} The Reform Party of Canada is a Western-based political party led by Preston Manning. Waller, supra note 13.
opposition to the Accord in early September, the party was opting for a somewhat risky strategy.\textsuperscript{133} But the subsequent surge in support for the "No" side throughout the country allowed Reformers to claim that they, unlike their rivals,\textsuperscript{134} "were listening to and reflecting the 'grassroots' sentiment to the [C]onstitution."\textsuperscript{135} Thus, the party declared, it had achieved its goal: any future attempt at constitutional reform would include input from the Reform Party of Canada.\textsuperscript{136} Ironically, support for the party in the polls actually dropped even as the "No" campaign they headed gained ground.\textsuperscript{137}

Reform leader Preston Manning and other Western opponents of the Accord pointed to the Accord’s failure to achieve satisfactory Senate reform, “its excessive concessions to Quebec, and the ramifications of aboriginal self-government.”\textsuperscript{138} Similarly, numerous small private groups who were dissatisfied with one feature or another boosted the “No” cause as the campaign wore on.\textsuperscript{139} Increasingly, “it seemed that attentions were being fixed on the Accord's specific shortcomings rather than on the totality of the package and the context of the negotiations that produced it.”\textsuperscript{140}

Quebec federalists\textsuperscript{141} also objected to the Accord, believing that it "strengthened local power at the expense of the Federal government and the rights of individuals.”\textsuperscript{142} Moreover, former Prime Minister Trudeau became a major influence in swaying the vote against the Accord by “dismissing Quebec’s gains as ‘blackmail,’ and publicly condemning the

\begin{footnotesize}
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\item Came, supra note 126.
\item Rivals of the Reform Party include the Progressive Conservative Party (headed by Mulroney), the Liberal Party (headed by Bourassa) and the New Democratic Party. Waller, supra note 13.
\item Came, supra note 126.
\item Id.
\item The Referendum, supra note 124.
\item Waller, supra note 13.
\item Id.
\item Id.
\item Id. Under Quebec law, which required that there be only two umbrella committees -one for the "Yes" side and one for the "No" side - “No” voters in Quebec were compelled to work under the same banner. This, oddly enough, put separatists and federalists on the same committee. The law was drafted by the PQ government for the 1980 vote on sovereignty-association. Reform Now, Before the Next Vote, GAZETTE (Montreal), Nov. 9, 1992, at B2 [hereinafter Reform Now].
\end{enumerate}
\end{footnotesize}
whole constitutional process,"143 thus making opposition to Quebec's demands "politically correct," and buttressing the federalist's position.144 Although Canada's more mainstream politicians were united behind the Accord, their "public esteem" had suffered so greatly in the past that in the end, they hurt the "Yes" side more than they helped it.145 Although Trudeau has been retired from politics for the last eight years, the former Prime Minister remains highly credible, and capable of trenchant criticism; Trudeau's remarks were perhaps the single most important influence in swaying the vote from "Yes" to "No".146

Officially, however, the "No" committee was headed by PQ leader Jacques Parizeau, who viewed a "No" vote as a step towards the road to independence.147 In the end, many French-speaking Quebecois voted "No". The PQ argues the rejection was because voters thought the Accord failed to give their province the additional power required to preserve Quebec's language and culture, and because they felt like Bourassa had not done enough during the negotiations to ensure adequate protection for Quebec's concerns.148 Despite the PQ's claims, however, most Quebecers simply felt that the Accord was a poor deal overall; they were not, in actuality, supporting the view that Bourassa had mishandled the negotiations.149

143 Analyzing, supra note 130. Ironically, it was Trudeau's patriation of the Constitution Act, without Quebec's support, that made the constitutional process necessary in the first place. Id.
144 Id.; see Came, supra note 126.
145 The Referendum, supra note 124. In contrast, the provinces who firmly voted "yes"—Newfoundland, New Brunswick, Prince Edward Island—"have the most trusted leaders in the country." Id.
146 Id.; Analyzing, supra note 125; Waller, supra note 13.
147 Reform Now, supra note 141. At least 90% of Quebec non-francophones voted yes because they thought a "No" vote might lead to separation. "This perception was reinforced by the fact that the PQ controlled the official 'No' campaign committee." Don MacPherson, Cold Comfort; Referendum Result Shows Equality Party Doomed, GAZETTE (Montreal), Nov. 10, 1992 at B3.
148 Waller supra note 13; Benesh, supra note 21.
149 Analyzing, supra note 130. Forty-four percent of the "No" voters reported doing so because their province failed to get enough concessions from the rest of Canada. However, a larger number, 56 percent, reported voting "No" because they thought the deal was a poor one. Id.
C. Post-Charlottetown: The Constitutional Issue in the Face of New Leadership

Throughout his eight years in office, Prime Minister Mulroney earnestly sought to fulfill former Prime Minister Trudeau's 1980 promise to Quebeckers of renewed federalism. But in June of this year, Mulroney will hand over the reigns without having achieved his goal. Renewed federalism has been rejected by English-speaking Canada. Quebec remains bound by a Constitution it has never endorsed and does not accept. Moreover, the Constitutional debate and the two failed accords have aggravated regional tensions and provoked clashes among ethnic and language groups. Federalism has never contemplated such discord.

Thus, critics argue that the constitutional issue should have been left alone. They argue that the symbolism was too destructive and created more disunity than unity. Many assert Prime Minister Mulroney was more interested in arriving at a constitutional consensus than in providing good government, and he and his fellow Canadian politicians simply propagated a lot of hype and hysteria over a crisis that never really existed. Perhaps they were the only ones who believed they were saving the country with their constitutional haggling.

But in truth, the Quebec question has been at the top of the constitutional agenda since 1960, more than twenty years before Brian Mulroney became Prime Minister. Even then Pro-separatists were demonstrating on St. Jean Baptiste Day. Since then, the question—what was the place of the

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150 Edison Stewart, Unity Issue Unresolved Despite PM’s Best Efforts, TORONTO STAR, Feb. 26, 1993, at B7; see supra notes 52-53 and accompanying text (discussing Trudeau and renewed federalism).
151 Bercuson, supra note 41.
152 Goar, supra note 16.
153 Janigan, supra note 4.
154 Stewart, supra note 150.
155 Bercuson, supra note 20.
156 See Goar, supra note 16.
157 Id.
158 Bercuson, supra note 41; see supra notes 39-45 and accompanying text (discussing the Liberal Party coming to power in 1960 and starting the Quiet Revolution).
159 Sibley, supra note 46. St. Jean Baptiste Day is one of Quebec’s two “national” holidays, and is celebrated every June 24 in the province. St. Jean Message Losing Audience, GAZETTE, (Montreal), June 23, 1992, at B2. “Despite worthy attempts to present the holiday as an event for all Quebeckers, the parade and its ambience tend to become vigorous
Quebec nation to be within the larger Canadian nation?—has been asked increasingly, and increasingly vehemently. 160

Although when Mulroney came to power, the issue was dormant in Quebec for the first time in years, 161 Canadian history has repeatedly shown that while national unity issues may lie dormant for awhile, they never completely disappear. 162 Political scientists estimate that forty percent of Quebecers are in fact hard-core independantistes, and as PQ leader Jacques Parizeau noted, "[a]t that level of support, nothing vanishes." 163

Thus, in taking on the constitutional challenge, the Prime Minister was simply facing reality, choosing not to ignore the underlying issue rather than pretend the crisis was gone for good. Had he instead avoided the question, he would have been called a coward. Instead, because he poured his heart and soul into the search for an end to the problem, he should at the very least be commended for his zeal and his perseverance. 164 Attempting to solve the problem through constitutional reform had about as good a chance of success as it did of failure. Mulroney cannot be faulted for the Accords' rejection or for the debate which ended in deadlock.

Regardless of whether or not the Prime Minister is to blame for the current situation, he will be leaving the federal scene in June, and the race for new leadership will begin. 165 If, after all his efforts, Mulroney was unable to solve the constitutional problem, what can his successor possibly do? Perhaps the regime simply is, by its very nature, impossible to reform. 166 Defense Minister Kim Campbell (Conservative), who pollsters say is well on her way to becoming Canada's first woman Prime Minister, 167 claims that as a woman and westerner she understands the political

statements of political nationalism - a propaganda exercise for the Society's goals of Quebec independence and cultural protectionism." Id. For example, in 1991 the parade featured huge, block-sculpted models representing Quebec as a "land of giants", capable of taking charge of its future but held back by familiar oppressors. Id.

160 Bercuson, supra note 20.

161 Quebec After Mulroney, supra note 2.

162 Constitutional Debate, supra note 36.

163 Carol Goar, End of Unity Crisis No Guarantee of Domestic Bliss, TORONTO STAR, April 14, 1992, at A19.

164 See Stewart, supra note 150.


166 Id. (quoting PQ constitutional critic Jacques Brassard).

167 Bryden, supra note 22. A poll of 1,500 voters conducted March 15-18 found that 42% of Canadians thought Campbell would make the best PM. Id.
alienation felt by French-speaking Quebecers. Unfortunately, so far, that is all she has said on the subject.

D. Sovereignty

As the political situation in Canada changes, one thing remains clear: the Quebec question will soon surface again, whether the new Prime Minister wants it to or not. Parizeau and the PQ have already developed a plan to achieve secession by 1995, based on Bourassa's likely resignation and the lack of any potential worthy successor. The PQ hopes for a separatist sweep of Quebec in the 1994 provincial election, which would be followed by a referendum on outright independence in 1995, on St. Jean Baptiste Day (June 24). When last faced with such a referendum, Quebecers voted "No." With two-thirds of Quebec's Francophones having rejected the October 26 referendum, however, separatist's hopes are high.

But sovereignty would have its costs—for Quebec and Canada. In the event of separation, the two "new" governments would likely face considerable difficulties in financing their debts and deficits. Canada's inability to finance its excessive debt domestically has already made Canadians extremely dependent on foreign investment. As for Quebec, the new independent state would not necessarily be entitled to continued benefits from the Canada-United States Free Trade Agreement if it were no longer

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169 Id. "Fully 47 percent of Canadians were unable to cite anything they like about Campbell and 75 per cent couldn't cite anything they dislike." Bryden, supra, note 22.
170 Benesh, supra, note 21.
171 Id.; see supra note 159 and accompanying text (discussing St. Jean Baptiste Day). Separation will be the issue in the Quebec election, unless the pro-sovereignty hardliners who control the PQ agree to soften the party policy before then, which seems unlikely (since the party is currently leading in popularity among francophones). "That policy, as stated in the party program and by party leader Jacques Parizeau, says a vote for the PQ would be a vote to begin the process leading to sovereignty to be held within eight months of the election of the PQ government." MacPherson, supra note 147.
172 See supra notes 52-53 and accompanying text (discussing Trudeau and renewed federalism).
173 Benesh, supra note 21.
174 McKenzie, supra note 5.
175 The Constitutional Debate, supra note 36.
176 Id.
a part of Canada. Even if the United States were receptive to a separate deal with a separate Quebec, their bargaining power would be substantially less as an independent state than as a dominant player within the Canadian federation. In addition, the new government would have to settle many other issues, both political and legal: assets would need to be divided, citizenship rules developed, and the relationship between Canada and Quebec more clearly defined.

If the federation broke apart, however, it would not likely be consumed by Yugoslavia-style civil wars; unlike the Yugoslavs, Quebecers are not imprisoned in a colonial situation, subject to dominion by outsiders. Rather, they have full representation in Parliament and the civil service. Still, the prospect of a Canada divided against itself is an unpleasant one—especially for the United States. In particular, a break-up of the Federation would complicate the United States' security and commercial ties with its "nearest ally and most important trade partner." As President Bush said on a visit to Toronto in 1990, "a unified Canada is a great partner."

International legal principles present another sovereignty issue. The debate on the legal status of the principle of self-determination continues, but the belief that it exists as a legal right is held more widely today than ever before. The determination of "which 'self' is entitled to determine what, the United States Can Push Canadian Unity, N.Y. TIMES, Sept. 8, 1990, at 23.

Walter Stefaniuk, The Break-Up of Canada, TORONTO STAR, Feb. 16, 1993, at A7. For example, Canada and Quebec would have to decide whether to have free trade or customs duties. They would also have to make a decision about whether to retain a common currency, and, if so, whether to have a central bank that controls the currency. Id. Canada's Future, supra note 9; Chuck Sudetic, Yugoslav Fighting Breaks Cease-Fire, N.Y. TIMES, Nov. 7, 1991, at A10. The Yugoslavs were divided by nationality, religion, and history. Civil wars broke out after Croatia declared its independence on June 25, 1991. As one writer notes, "Yugoslavia most dramatically demonstrates the disastrous potential of the assertion of collective rights in the postcommunist era." Id.

Stefaniuk, supra note 179.

Id. Canada's Future, supra note 9.

Id. President Bush made this statement while on a visit to Toronto in April of 1990.

Id. POMERANCE, supra note 75, at 73.
when, and how, remains the central question [facing the international community] which eludes simple objective answers.\textsuperscript{187} As some Canadian constitutional lawyers argue, self-determination is a legal right which applies only to a colonial or subjugated people.\textsuperscript{188} Other legal scholars maintain that the right to self-determination is not so limited, and that if Quebecers decide they want to be independent, no legal rule exists which would prevent them from leaving.\textsuperscript{189}

Lastly, the status of secession within the self-determination doctrine remains unclear. Without any general agreement as to the nature of a "legitimate" secessionist movement, the international community will have a hard time determining whether a Quebec claim to secessionist self-determination would be a legitimate one or not.\textsuperscript{190}

In the end, Quebec is no better off now than it was before negotiations began. A new prime minister, one without alternative solutions, will not likely change anything. Other than the status quo, Quebecers are left only with the option to leave the federation—an option which could quite possibly leave them in a much worse position internationally. Thus far Canadians have fought this battle together. The end result though, will be up to Quebecers to decide.

IV. CONCLUSION

Perhaps Canada was right to refuse Quebec the power it desired within the federation; weakening the federal government may not have been good for Canadian federalism. Ironically, though, Canada's very future is now in Quebec's hands. The 1995 referendum will likely go on as planned, without being postponed by yet another accord. Another constitutional package is not entirely out of the question, however, especially if the new Prime Minister wants to try his or her hand at the negotiating game. Nevertheless, it will be difficult to muster the political will to go through this process again, knowing that everything possible was done twice before, yet

\textsuperscript{187} \textit{Id.}
\textsuperscript{188} Stefaniuk, \textit{supra} note 179.
\textsuperscript{189} \textit{Id.}
\textsuperscript{190} See BUCHEIT, \textit{supra} note 71, at 216. According to Buccheit, a legitimate claim to secessionist self-determination is one where the claimant has demonstrated that it is in fact a self, and that secession would likely result in greater world harmony than would be the case if the existing union were preserved. \textit{Id.} at 228.
constitutional reform was rejected.

Although not all Quebecers are die-hard separatists, few are content with the status quo. In light of the two failed accords, many now view reform as a non-viable option. For the next two years, separatists will be pitching independence at the top of their lungs. This time, more Quebecers may be willing to listen.

Susan Lavergne