# CANADA'S 1992 CHARLOTTETOWN CONSTITUTIONAL ACCORD: TESTING THE LIMITS OF ASYMMETRICAL FEDERALISM

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**Abstract.-**Canada's 1992 Charlottetown Constitutional Accord represented a dramatic attempt to transform the Canadian federation which is based on formal symmetry, albeit with a limited recognition of some asymmetry, into an asymmetrical federal constitution recognizing Canada's three nations, French, British, and Aboriginal. Canadians were called up to embrace multinational federalism, one comprising both stateless and state-based nations exercising self-governance in a multilayered, highly asymmetrical federal system. This paper explores why a majority of Canadians, for a wide variety of very complex reasons, opted in the first-ever constitutional referendum in October 1992 to retain their existing federal system. This paper argues that the rejection of a formalized asymmetrical federation based on the theory of multinational federalism, while contributing to the severe political crisis that fueled the 1995 referendum on Quebec secession, marked the moment when Canadians finally became a fully sovereign people.

## INTRODUCTION

The Charlottetown Consensus Report, rejected in a landmark constitutional referendum on 26 October 1992, entailed a profound clash between competing models of federalism: symmetrical versus asymmetrical, and bi-national versus multinational. (Cook, 1994, Appendix, 225-249) The Meech Lake Constitutional Accord, 1987-90, pitted two conceptions of a bi-national -- French-Canada and English Canada – federalism against one another. The established conception entailing a pan-Canadian French-English duality was challenged and overtaken by a territorial Quebec/Canada conception of duality. (Behiels, 1989) In its final form, the Charlottetown accord entrenched an emerging conception of multinational federalism comprising the Québécois nation, the Canadian nation, and the Aboriginal nations. This model of asymmetrical federalism trumped both conceptions of a bi-national federation. (Cairns, 1994; Turpel, 1992 & 1993; Gagnon and Tully, 2001).

The *Constitution Act, 1982* entrenched the longstanding theory and practice of symmetrical federalism -- one with a limited recognition of certain asymmetric aspects -- in a general amending formula based on the equality of the provinces. As well, the very popular national Canadian Charter of Rights and Freedoms that entrenched fundamental human rights, equality rights, as well as minority rights enhanced formal symmetry for the official language minority communities, the ethno-cultural communities and Canada's Aboriginal Peoples. The mega-constitutional negotiations that produced the 1992 Charlottetown Accord constituted a failed attempt to transform Canada's formal symmetrical federation into an asymmetrical multinational federation.(Cairns, 1994).

The demise of the Charlottetown accord did not end the political clash over competing conceptions of federalism. Given that the struggle is once again on the national political agenda, it is important to analyze the complex, controversial, and incomplete nature of the Charlottetown accord as well as the central reasons why Canadians turned it down so emphatically in the 1992 referendum. The Charlottetown deal was rejected by a majority of Quebec's Francophone community because it did not grant the Quebec state enough constitutional asymmetry to preserve and promote the Québécois nation. In opposition to the Assembly of First Nation leaders, a majority of


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status Indians rejected the accord, in part, because its 'Aboriginal Constitution' granted too much asymmetry to self-governing Aboriginal communities. (Turpel, 1992 & 1993) A majority of Canadian citizens rejected the accord because of its numerous and excessive asymmetrical features. They rejected the conception of an asymmetric, bi-national, territorial Quebec/Canada constitutional structure represented by the clause recognizing Quebec as a 'distinct society' and empowering the Quebec government and its legislature to preserve and promote this undefined 'distinct society'. Canadians, including a majority of Québécois, also rejected the multinational conception of federalism entailed in the ambiguous and largely undefined Third Order of government for Aboriginal Peoples.

Another very important reason helping to explain the failure of the Charlottetown Accord pertains to the executive driven process. The elitist, top down approach to constitutional reform was rejected by Canadians who had become far less deferential that in the past and who were determined to protect the Charter of Rights and Freedoms from the premiers and prime minister who were seen as trying to limit its reach. (Cairns, 1992; Henry, 1993) This process prevailed until the Mulroney government was compelled to hold a referendum by the Official Opposition and the governments of Quebec, Alberta, and British Columbia that were bound by law to hold referendums. There was, contrary to the claim of some supporters (Milne, 1992; Jensen, 1992) and analysts (Ajzenstat, 1994) only marginal input from Canadian citizens into the process despite their repeated calls for a Constituent Assembly. Consequently, the accord was so heavily burdened with innately incommensurate, competing interests — provincial and territorial governments, four national Aboriginal organizations, and Charter federalist groups — that the odds of its rejection in an unplanned referendum were extremely high. Of course, given the immense human and economic resources at the disposal of the "YES" campaign, the success of the highly divergent "NO" organizations depended entirely on how well they could reach and convince a majority Canadians with their respective critiques of the process and various elements of the accord. The argument dealing with the flawed process is relatively easy to substantiate. The accord was subjected to several extensive and highly revealing post-mortems. (Whitaker, 1993; Henry, 1993).


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Yet, the rejection of the Charlottetown accord can be interpreted in a positive manner. On the higher level of constitutional development, one can make the argument that there is little to lament and much to warrant a very modest celebration. Canadians, in exercising their democratic rights, emerged from the destabilizing process a more democratic and fully sovereign people. The Charlottetown accord's defeat had an expected negative outcome during the initial phase and then an unintended positive outcome during the second phase. Initially, the defeat set in motion a conjuncture of political developments that precipitated a second Quebec referendum on secession in 1995. During phase two, following the narrowest of defeats of the "YES" option referendum, the stage was set for a series of very significant political and constitutional developments including Parliamentary activity, the Supreme Court ruling on the Reference re the Secession of Quebec, and finally the Clarity Act. These developments, in tandem with an evolving demographic and socio-economic environment, set in motion an ongoing decline of the Québécois secessionist movement. This development has had a powerful impact on the political fortunes of its standard bearers, the Parti Québécois and the Bloc Québécois. By the fall of 2007, the respective Parti Québécois' and the Bloc Québécois' strangleholds over the regions of Quebec outside Metropolitan Montreal are being eroded rapidly by Mario Dumont's Action Démocratique du Québec and Prime Minister Harper's Conservative Party, aided and abetted by the ADQ as well as by Jean Charest's Liberal government. As a caveat, one must not equate Québécois secessionism with variants of Québécois nationalism that, no doubt, will continue to thrive as important ideological forces in Quebec and Canadian politics.

## I – HOW CANADIANS GOT THE CHARLOTTETOWN ACCORD

Prime Minister Brian Mulroney and Premier Robert Bourassa, in the aftermath of the defeat of the Meech Lake Constitutional Accord in June 1990, gambled big time with Canada's constitutional future when they initiated a second controversial and destabilizing round of mega-constitutional negotiations dubbed the "Canada Round!" (Peach, 2007 & Behiels 2007). Bourassa decided that Quebec, henceforth, would only negotiate with Ottawa, nation-state to nation-state. Bourassa refused to play by the rules of the constitutional amending process involving all the premiers and legislatures


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because this multilateral process had destroyed his cherished Meech Lake Accord. The Quebec government, a determined but ailing Premier Bourassa decided, would put a 'knife-to-the-throat" of Canada in order to achieve its constitutional objectives. With Mulroney's complicity, the Bourassa government backed its "knife-to-the–throat" ultimatum with a controversial referendum law, Bill 150, requiring a vote no later than 26 October 1992. The question placed before Quebec voters would reflect one of two options: 1) acceptable constitutional proposals—basically the Meech Lake Constitutional Accord plus add ons— from the Rest of Canada; or 2) Quebec's outright secession from Canada. The Canadian government despite several admonitions by a constitutional expert, Professor Stephen A. Scott of McGill University's Faculty of Law, did not contest the highly controversial aspect of Bill 150. (Scott, 1992) In not doing so, the Canadian government lead Canadians to believe that Quebec's National Assembly had the legal authority, under international law, to make a unilateral declaration of independence following a simple majority vote in favour of secession. This oversight on the Canadian government's part would prove to be costly when Premier Parizeau's 1994 Draft Bill, *An Act Respecting the Sovereignty of Quebec*, reaffirmed Quebec's right to secede unilaterally following failed negotiations with the Canadian government. (Newman, 1999).

The beleaguered Mulroney government created a damaging populist sideshow called the Citizen's Forum on Canada's Future. Keith Spicer, the Forum's Chair, encouraged frustrated, angry Canadians to vent their spleen and then blamed the PM for the crisis in his June 1991 Report. (Canada, 1991a) The PM created two parliamentary committees, one chaired by Senator Gérald Beaudoin and MP Jim Edwards, to ascertain if and how the three year delay in the amending formula for ratification could be circumvented. It could not be done. Instead, the committee recommended adopting an amending formula based on four regions, an impossible challenge. Mulroney created a second Joint Committee, chaired by Senator Beaudoin and MP Dorothy Dobbie to sell Canadians on his government's constitutional package, entitled *Shaping Canada's Future Together*. (Canada, 1991b) The Committee's anodyne Report proposed only minor amendments to the governments' proposals. (Canada, 1992) The committee was derided and then largely ignored by the media and Canadians. Its co-chairs only managed to rescue the committee from total humiliation thanks to a series


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of orchestrated and highly elitist regional meetings arranged in the final stage of negotiations. (Government of Canada, 1992).

Oblivious to an impending political tsunami, PM Mulroney pushed on. His constitutional point man was Joe Clark who, in March 1992, set in motion a complex process of multilateral negotiations involving nine premiers and/or their ministers and representatives from four national Aboriginal organizations. Representatives from a wide range of Charter Canadian groups and other interested parties were not allowed to participate. Not surprisingly, this highly secretive group of individuals produced an ambitious, ambiguous, and complex package of 63 very controversial constitutional amendments —some requiring 25 political accords to complete—reflecting their exclusive political and ideological agendas and interests. (Continuing Committee of Ministers on the Constitution, 1992).

In what proved to be major strategic mistake, Mulroney and Bourassa interjected themselves in the negotiations during the last stage, and then, only to ensure that the Meech Lake Constitutional Accord's central elements remained largely intact. They realized, too late to change the results, that an overly eager and naïve Joe Clark had outwitted himself, his boss, and Premier Bourassa. The Quebec political class's demand for the constitutional recognition of a bi-national Quebec/Canada asymmetric federation was overtaken by the more expansive concept of an asymmetrical multinational federation. (Behiels, 2007) The Meech Lake Accord's controversial 'Distinct Society' clause, while largely intact, was deftly imbedded within an interpretative "Canada Clause" committing the Canadian government to the development of the official language minorities, self-government for the Aboriginal Peoples, and racial and ethnic equality.(Trudeau, 1992; Laforest, 1992) The proposed elected and equal Senate of Canada failed to satisfy Western Canadians who demanded a "Triple-E", elected, equal and effective, Senate. (Elton, 1993) The proposed Third Order of Government, distinct from that of the provinces and the central government, for Canada's Aboriginal Peoples alienated a majority of Canadians in every region of Canada. Closer scrutiny revealed that these proposals would surreptitiously undermine both the national and provincial governments' powers. (Cairns, 1994; Elkins, 1992).


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Francophone Quebecers' rejection of the "poisoned" Charlottetown deal was a foregone conclusion, especially once Bourassa's leading constitutional advisors went public, inadvertently, with their scathing denunciation of the deal. Many Québécois nationalists believed that Bourassa had deceived them with his promise of a referendum on secession if Canada's offer was not satisfactory. (Lisée, 1992) The deal's rejection by Western Canadians was also a foregone conclusion. They gained an ineffective Senate but only at the unholy price of granting Quebec a permanent twenty-five percent lock on representation in the House of Commons. The ill-fated deal was in trouble from the outset and the referendum gave all Canadians the opportunity to have their say. The numerous and highly divergent "NO" organizations had to overcome a formidable "YES" organization funded by all Canadian taxpayers and backed by corporate giants across the land. That the "NO" forces prevailed demonstrated the growing constitutional maturity of Canadians and their desire to become a truly sovereign people. The Constitution, Canadians asserted, belonged to them-- it was far too important to be left up to politicians, especially ones they could not trust.

## II – EVALUATING CHARLOTTETOWN'S DEFEAT

Virtually every dimension of the Charlottetown deal had its staunch defenders and its vociferous critics. As with the Meech Lake Accord, there was no end of controversy and debate on the issue of process. Clark's fateful decision to include only Aboriginal representatives while excluding all other Charter Canadians backfired. It ignited a firestorm of opposition to the entire deal and eventually aroused anger towards the dealmakers, especially PM Mulroney and Premier Bourassa. No matter how Canadians viewed the contents of the Charlottetown deal, most of them were convinced that the deal was illegitimate because of the elitist, exclusionary nature of the entire process, one all-too-reminiscent of the despised Meech Lake Accord. (Delacourt, 1993).

Pressured by Jean Chrétien and Western Premiers, PM Mulroney was forced to hold a national referendum on a highly complex, incomplete deal. The holding of a referendum on extensive and far reaching constitutional reforms was preordained to


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spark heated debate, polarizing Canadians from coast to coast. Procedural liberal theorists criticized the use of a referendum to pass judgment on the "refounding" of the Canadian Constitution. In liberal democracies, Janet Ajzenstat writes, "the constitution is superior law, defining the limits of government power and the conditions of participation in the political process; …liberal theory regards the constitution as the rule book for the political game. A good rule book should not be changed too abruptly or too often and –most important—not by the players while they are on the ice."(Ajzenstat, p. 113) This form of constitutional populism, procedural liberals argue, is unproductive and highly destructive of national unity because it undermines the concept of the neutral state. And yet, procedural liberal theorists fail to acknowledge that the political context of 1992 made the holding of a referendum inevitable. Bourassa had precipitated the "Canada Round" with a referendum law, Bill 150, which challenged the very constitutional integrity of the Canadian nation-state. Populist Alberta and British Columbia governments had passed laws requiring a referendum on all amendments to the Constitution.

A second dimension of Charlottetown that generated considerable discussion and profound disagreement involved amendments to Canada's federal institutions. Professor Tom Watts of Queen's University, and Gerald Beaudoin, a constitutional expert and Senator -- two of Mulroney's closest advisors – and Donald Lenihan of the Network on the Constitution rejected the critique that the accord was merely a confusing grab-bag of sixty items. In Watt's words, the reform of federal institutions was "an attempt to provide an overarching framework integrating the Charter of Rights and Freedoms and federalism."(Watts, 1993, p. 17; Lenihan, 1992; Beaudoin, 1993) The interpretation of Watts and Lenihan is based on the assumption that federalism and the *Charter* are inherently incompatible. Canada's *Charter*, the people's package, had to take a back seat to a much more asymmetrical multinational federation, one which could accommodate the special needs of Quebec's Francophone majority and Canada's beleaguered Aboriginal communities. Political scientist James Kelly, drawing upon a close analysis of all the Charter cases dealt with by Canada's Supreme Court since 1982, refutes convincingly this claim of incompatibility between the *Charter* and federalism. (Kelly, 2001 & 2005).


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Peter Hogg, of Osgoode Law School, was a qualified supporter of the accord. Yet, he was drawn to conclude that the deal was rejected primarily because public opinion outside Quebec was opposed to any significant weakening of the federal government through its proposal for an asymmetric multinational state. Hogg considered that the very modest reforms to the division of powers -- delegation to the provinces -- especially to Quebec, restrictions on federal spending power, the constitutionalizing of intergovernmental agreements, transfer of some residual powers to the provinces, and the termination of the federal declaratory power—were far too complex and cumbersome to be workable. "Indeed," he wrote, "the *Draft Legal Text* looked more like an amendment to the Income Tax Act than an amendment to the constitution." (Hogg, 1993, p. 92).

Francophone Quebecers rejected reforms to the division of powers for opposite reasons. The clauses pertaining to Quebec, Jacques Frémont, professor of law at l'Université de Montréal, argues, were insufficient and dangerous for Quebec. Charlottetown legitimized and constitutionalized Ottawa's spending power by doing away with the principle of the exclusiveness of provincial powers. It would be far more productive for the Quebec government to "insist on being able to exercise effectively, and without any interference, as fully and completely as possible, the jurisdictions recognized by the Constitution Act, 1967 and its subsequent judicial interpretations." (Frémont, 1993, p.101).

Central to the question of the division of powers is the controversial concept of asymmetrical federalism. Leading proponents of greater decentralization, including Western Canadian premiers and virtually all Québécois politicians and intellectuals, lamented the fact that a devolution of specific powers to various provinces -- except for what they considered was asymmetry's weak cousin, the distinct society clause -- never became the central dimension of the watered down Charlottetown accord. (Laforest, 1992; Noël, 1992) Why? Reg Whitaker offers three valid explanations that are supporters by most Canadian political scientists. Most premiers, out of self-interest, remained firmly wedded to the concept of the equality of the provinces because it was the theoretical justification for a "Triple-E" Senate. For them symmetrical federalism trumped asymmetrical multinational federalism. Second, many political scientists and constitutional lawyers point out that Quebec would loose


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representation in the House of Commons and Senate and the pan-national and Quebec/Canada dualisms that accompany this representation. Asymmetry is unworkable in a British parliamentary form of government. Thirdly, public opinion in the rest of Canada was overwhelmingly opposed to any dimension of special status for Quebec. And still, Whitaker maintains that showing how asymmetrical federalism produced a win-win scenario could have changed public opinion. He argues that Bourassa lacked the courage and determination to follow through on his threat of secession. "The threat of Quebec sovereignty," he laments, "has been the dog that did not bark." (Whitaker, 1993, p. 109; McRoberts, 1995).

On Senate reform, several contributors to the Charlottetown post-mortem, including the outspoken President of the Canada West Foundation, David Elton, argued that Charlottetown's proposals "would create a partially elected Senate, with formally equal provincial representation but de facto special powers for Quebec senators, and an effectively emasculated Senate."(Elton, 1993, p. 37) A majority of Western Canadians rejected the hobbled "Triple-E" Senate while a majority of Francophone Quebecers believed that a guarantee of 25 percent of the seats in the House of Commons in perpetuity was not worth exchanging for an equal and appointed Senate. Most Canadians, especially Senate reformers in Western Canada, decided they were better off with the devil they knew rather accepting a hobbled "Tripple-E" Senate.

The Aboriginal constitutional package, which formed the largest part of the Charlottetown Consensus Report, represented the most powerful endorsement of asymmetrical multinational federalism. The four Aboriginal Constitutional conferences, three under Brian Mulroney's government, which were mandated by the *Constitution Act, 1982* failed to produce any consensus on the nature and scope of Aboriginal self-government under S. 35. This need to bring the four National Aboriginal organizations to the constitutional table was resulted Mulroney government's assessment, never made public, that the Meech Lake Accord failed ratification in the Manitoba Legislature because of the orchestrated opposition of the Assembly of First Nations whose leaders orchestrated Elijah Harper's rejection of the procedural changes required to allow the legislature to debate and eventual ratify the Meech Lake Accord. Given that the *Draft Legal Text* appeared only two weeks before the referendum, Canadians had no time to explore the full implications of what was in fact an elaborate Aboriginal Constitution


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within the Canadian Constitution. Representatives for the four national Aboriginal organizations, status and non-status Indians, Métis, and Inuit, were the only ones allowed to operate as "insiders" at the negotiating table. Logically, the final deal reflected their constitutional wish lists. Political analysts later revealed the fundamental contradictions in Canada's political culture. Canadians rejected Québécois neo-nationalists' demand for "special status" for Quebec while inadvertently supporting a far more extensive special status for Aboriginal Canadians. (Behiels, 2000 & 2007).

A highly perceptive Alan Cairns characterized the numerous Aboriginal amendments as a comprehensive Aboriginal constitution within the Canadian constitution. He maintains that Canadians did not view an Aboriginal Third Order of government--a powerful form of special status--as a political threat. Why? Because "psychologically Aboriginal peoples are not viewed as standardized members of the Canadian community." Canadians, Cairns maintains, continue to perceive Aboriginal peoples, as "outsiders" making their demand for political, social, and economic segregation seem quite logical and acceptable. Canada's Aboriginal Peoples, Cairns concludes, must be recognized as Citizens Plus in order to ensure that their use of instruments of self-government engender solidarity rather than separation and alienation. Given that Canadians have come to understand the significance of the Aboriginal package, it is unlikely they will constitutionalize 'special status' for Canada's Aboriginal Peoples. (Cairns, 1994 & 2000)

## III – THE REJECTION OF ASYMMETRIC FEDEDERALISM: THE RISE AND DECLINE OF SECESSIONISM

Canadians' wholesale rejection of asymmetric federalism imbedded in the Meech Lake and Charlottetown constitutional accords had both negative and positive consequences. The negative political consequence was quite predictable while the positive consequence was largely an unforeseen outcome of the failed accords and the subsequent rise of the Québécois secession movement. During phase one, Charlottetown's rejection by the Canadian voters set in motion a momentous political crisis which came very close to destroying Canada during the second Quebec referendum on secession in 1995. (Pinard, 1992; Young 1998).


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Political scientist Max Nemni demonstrates that the deliberate fuelling and exploitation of Québécois nationalism by the Mulroney-Bourassa alliance's misguided attempts to implement Quebec's constitutional demands legitimized the Québécois secessionist movement thereby undermining the Canada's Constitutional democracy and its legislative, executive and judicial institutions. This unwarranted and misguided legitimization of secession by federalist politicians allowed Parti Québécois leader and Premier following the 1994 Quebec election, Jacques Parizeau, to proclaim that secession was the only alternative to the status quo since constitutional 'special status' for Quebec had been rejected. Parizeau went on to contend that secession was an exclusively political process, one that had nothing to do with the Constitution or the rule of law. He maintained that Quebec had the right to secede unilaterally following a majority – fifty percent plus one - YES vote in a referendum. There was no constitutional impediment, under domestic and/or international law, preventing Quebec's National Assembly from making a unilateral declaration of independence. This unfounded and dangerous argument went largely unchallenged by Ottawa between 1992 and 1995. The legitimization of secession, achieved via referendum followed by a UDI, galvanized the Parti Québécois militants into supporting Jacques Parizeau's promise of a referendum on outright secession within a year of the PQ's taking control of the Quebec state. These developments transpired in a climate of destabilizing economic and ideological shifts involving implementation of NAFTA, neo-conservative economic and social policies, and Ottawa's financial incapacity to shore up the beleaguered social service state. (Nemni, 1995).

This legitimization of secession made it much easier for Parizeau and Lucien Bouchard, leader of the secessionist Bloc Québécois at the federal level, to outmaneuver a distracted and disoriented Jean Chrétien Liberal government and to sway indecisive Québécois Francophones, many of them disenchanted federalists, to vote "YES" in the destabilizing 1995 referendum. The secessionist movement's strategy and tactics almost prevailed, falling short by just over 50,000 votes of obtaining a simple majority. (Young, 1998) While federalist forces prevailed by a slim margin, Jacques Parizeau's radicalized secessionist movement had overreached! It became clear that Premier Parizeau, while agreeing to Bouchard's demand for a question on sovereignty-partnership instead of outright secession, intended to proceed very quickly with a unilateral declaration of independence. (Parizeau, 1997) A slim


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federalist victory, and a shocking realization that Parizeau was determined to make a UDI, forced the Chrétien government into belated action. (Parizeau, 1997) The crisis set in motion a long overdue series of political and judicial developments that, in time, undermined the legitimacy of the secessionist movement and contributed to the slow decline of the Parti Québécois and the Bloc Québécois.

During the positive phase, following the rejection of asymmetric federalism and narrowest of victories in the referendum on secession, the Chrétien government set in motion a determined, farsighted, and successful challenge to the Parti Québécois' dogma of political unilateralism. Through a watershed Supreme Court legal decision on Quebec secession backed by very articulate political arguments of his Minister of Intergovernmental Affairs, Stéphane Dion, the Chrétien government convinced Canadians that there was a constitutional dimension to secession and that the rule of law must prevail if democracy and democratic institutions were to be maintained. (Dion, 1999) This constitutional and political breakthrough occurred, in part, thanks to an evolving socio-economic climate in Quebec and throughout Canada. Finance Minister Paul Martin put the national government's financial house in order. Furthermore, Québécois Francophones turned their attention and energies to other, more pressing matters, and along with most Canadians demonstrated a refreshing willingness to begin to rethink and to redefine the role of the state. Quebec's long and troublesome 'Quiet Revolution' was entering its final phase. (Behiels, 2007).

It was inevitable that Charlottetown' wholesale rejection would generate serious political upheaval. PM Mulroney's departure before the election of 1993 and Bourassa's resignation for serious health reasons abruptly ended their decade old alliance to entrench in the Constitution a bi-national Quebec/Canada asymmetrical federalism. Charlottetown's defeat prompted one constitutional analyst, Patrick Monahan of Osgoode Law School, to argue that it was foolhardy to attempt another comprehensive renewal of the Canadian Constitution. Canadians unhappy with the constitutional status quo had only two options, play by the existing rules or find a way to "jump outside" the 1982 constitutional framework and create a new set of ground rules. (Monahan, 1993, p. 224) It was a forgone conclusion that Parizeau and Bouchard would play political hardball. Why? "The rest of Canada, having rebuffed Meech Lake and Charlottetown," a leading Canadian journal warned, "is insisting that


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Quebec take the current constitutional arrangements and put them to the test in the confrontation with secession."(Simpson, 1993, p.199) Canadians had thrown the gauntlet down. Premier Parizeau promised to hold a referendum on secession followed by a UDI if the YES side won fifty percent plus one of the votes. Indeed, analysts maintain that Parizeau had no choice but to hold a referendum followed by a high risk UDI. Bourassa's failure was due to his inability to act decisively. (Whitaker, 1993; Lisée, 1994) Indeed, Premier Parizeau revealed later in his candid memoirs, *Pour un Québec souverain*, that he and several other PQ militants had long been convinced that a UDI within weeks of a "YES" vote would succeed. Surprise and speed, involving quick international recognition, first from France and then from the United States, were the keys to Quebec achieving independence.

Parizeau's role of the dice failed. This defeat --the importance, of which Parizeau realized immediately and resigned on the spot, --set in motion a series of political and judicial developments, which accelerated the slow, irreversible decline of the Québécois secessionist movement and the Parti Québécois. (Young, 1999) The 1995 referendum marked an important watershed in Quebec and Canadian politics. In due course, Lucien Bouchard and Bernard Landry, realized they had no choice but to function primarily, if not exclusively, as provincial premiers addressing many unresolved social and economic problems facing Quebecers. Mario Dumont's disgruntled Liberals, functioning under the banner of the Action démocratique du Québec, quickly distanced themselves from the secessionist project, focusing instead on downsizing of the Quebec state and improving the lives of Quebecers living outside the region of Greater Montreal.

Given this new context, PM Chrétien and his Minister of Intergovernmental Affairs, Stéphane Dion, grabbed the opportunity to challenge head on the Parti Québécois government's claim of secessionist unilateralism. Referendum night, Canadians and their political leaders experienced a massive seismic shock—at least a 7 on the Richter scale—prompting PM Chrétien to state that Canada would not disintegrate under his watch. The narrow victory forced his government to fulfill its constitutional obligations to defend the integrity of the Canadian nation-state. The PM was pressured by a strong majority of Canadians insisting that he challenge the legal assumptions underlying Parti Québécois secessionist dogma.


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Before the referendum, "Thinking the 'Unthinkable'" concerning secession became a fashionable imperative. Academics churned out studies analyzing the costs and consequences of separation, including if and how the Rest of Canada (ROC) would or could survive following Quebec's secession. One respected constitutional expert called for cooler heads to prevail (Monahan, 1995). A political commentator argued that a bi-national asymmetrical federalism could be avoided if Ottawa responded to the threat of Quebec secession by creating a dramatically decentralized federation for all the provinces. A vertical form of asymmetrical federalism would lead to a genuine Confederation in which the sub-states ruled. (Gibson, 1995).

Following the referendum, studies focused on four main themes sharpened dramatically as the debate shifted from the merely theoretical to the pressing reality of Canada's predicament. First, there were legitimacy issues involving the referendum question, the size of the majority, partition, Aboriginal rights, recourse to a UDI, and international reaction. There were strong disagreements about the appropriate negotiating process and the players to be involved. The list of negotiable issues by the various governments and other players grew exponentially. (Monahan and Bryant, 1996; Russell and Ryder, 1997)) This heated debate about the possible outcomes of secession negotiations evolved quickly. Following the lead of one astute analyst, (Young, 1999) several analysts moved from the camp of believers in the inevitability of a Quebec 'velvet secession' to the school of hardnosed realists proclaiming that the Parti Québécois has lost its trump card, the element of surprise thanks to a disorganized, disoriented Canadian government. One thing was certain. PM Chrétien would never allow a repeat of the political and judicial blunders of 1995. He finally understood that it was imperative to implement quickly "Plan B," a combined political education campaign explaining the horrendous consequences of secession and a clearly worded reference to the Supreme Court requesting the Justices to decide if the Quebec government, as it claimed, had a right to a invoke a unilateral declaration of independence under Canadian and/or International law. (Cairns, 1997).

The Supreme Court's 20 August 1998 ruling on the *Reference Re the Secession of Quebec* stands as a landmark constitutional decision. Warren J. Newman, a member of the Constitutional Affairs and Canadian Unity branch of the Department of Justice of


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Canada, played an important role in presenting Ottawa's arguments to the Court. His analysis of the Supreme Court's decision and its implications for Canada's constitutional and political development provides excellent insights into the nature and scope of Quebec political class' demand for secession once constitutional asymmetry for Quebec had been rejected. The Justices stated categorically that the National Assembly, legislature or government of Quebec could not carry out a unilateral declaration of independence from Canada under the Constitution of Canada or under international law. The Justices then shifted from a legal decision to a political analysis. They opined that four constitutional conventions —federalism, democracy, constitutionalism and the rule of law, and the respect of minorities--underlying Canada's constitutional framework and practice provided the principles whereby secession could become legal under an amended Canadian constitution. If a clear majority--by this the Justices meant some level of a super-majority--of Quebecers voted YES on a clear question pertaining to outright secession, then Canadian and provincial governments and other players would be obliged to negotiate in good faith. Every aspect of the constitution would be on the table and there was no guarantee that the outcome of secession negotiations would be successful. If negotiations failed, Quebec could still opt to unilaterally. An independent Quebec's leader would be compelled to face all the consequences flowing from their illegal, revolutionary act. (Newman,1999).

The Supreme Court's long overdue "reality check" transformed the political discourse surrounding the secession issue. The unrealistic debate between the impossibilists and the inevitabilists dissolved like snow on a hot spring day. Theoretically, secession could be made legal given an ideal set of circumstances and cooperation among all the stakeholders. In reality, secession had become highly improbable since it required a hard-to-achieve constitutional amendment. Polls revealed that a majority of Canadians, including Quebecers, supported the Justices' Solomon-like decision. PM Chrétien and his advisors, while grumbling that Canada's Justices should not have ventured into the realm of political advice, moved quickly to prepare legislation setting out the terms and conditions of all future referenda on secession. The Clarity Bill, a narrow, cautious response to the Reference opinion, mandated the Canadian government to accede to negotiations provided the referendum question was on secession and only secession and a substantial majority of citizens voted in favour of


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the option. No more trick questions and no further pretense that fifty percent plus one vote would suffice to break up the country. (Monahan, 2000).

Premier Bouchard, caught between a rock and a hard place, spun the historic decision the only way he could. The decision, he argued, obliged Ottawa to negotiate following any future referendum and it confirmed Quebec's right to a UDI if negotiations collapsed. He fulminated against the Clarity Act and promised a legislative riposte. He believed, momentarily, that he had found the elusive winning condition that would allow his government to launch a third referendum. Charest's Liberals and Mario Dumont's ADQ, who could also read the dramatic turn around in the polls, scoffed at Bouchard's allegations of Ottawa's deceit and humiliation. They rejected his plea for another "sacred union" against the Canadian federation. The high stakes, knife-to-the-throat, political blackmail on Canada's future was over. Bouchard's keen political instincts told him that his government's drive for secession was over. He grasped the first opportunity to resign as premier and leave politics. He later founded a group called *Pour un Québec lucide* which pleaded with Québécois to abandon their obsession with secession and focus on finding urgent solutions to Quebec's pressing demographic, social and economic problems.

His successor, Premier Landry and Parti Québécois militants, refusing to accept the new political climate, were determined to engineer their exit from Quebec's raucous political stage with a "bang" instead of the whimper. Landry could not gain any traction among increasingly reluctant Québécois voters who were tired of the secession debate and the social polarization it created. Premier Landry resigned following his defeat at the hands of Jean Charest's Liberal Party in 2003. He was replaced by an urbane, openly gay political upstart, André Boisclair, who all but ignored Parti Québécois militants and supporters throughout the regions of Quebec. He paid a heavy political price for this oversight. The door was opened wide to Mario Dumont's Action Démocratique du Québec, who played down his secessionist ambitions in the 2007 election to win 41 seats (up from five in 2003) mostly outside the Montreal region at the expense of the Parti Québécois with 31 percent of the popular vote. André Boisclair was pressured to resign and Parti Québécois militants turned to a veteran, Pauline Marois, to lead their ailing party back to office. She has made is abundantly clear that


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under her leadership the Parti Québécois would not be pursuing the dream of secession in the very near future. (Pratte, 2006)

## CONCLUSION

For two decades following the *Constitution Act,1982* with its *Charter of Rights and Freedoms* and amending formulae, Canadians agonized over two sets of mega-constitutional proposals, first the Meech Lake Accord and then the Charlottetown Consensus Report. Their political leaders and governments warned Canadians repeatedly that if they refused to ratify the proposals entrenching an asymmetrical multinational federation in the Constitution -- a structure that most Canadians considered unnecessary or highly questionable -- then Canada would disintegrate. Refusing to be cowed by all the doom & gloom prognosticators, Canadians rejected both accords. This, despite the fact that Canadians had to grapple with the political fallout, particularly the 1995 Quebec referendum, as mature and informed citizens. At long last, Canadians took possession of their Constitution and, in so doing, helped transform Canadians into a truly sovereign people. Of course, the door to constitutional restructuring remains open. Fortunately, Canadian now have a much better understanding of their Constitution and the how it might be amended when and if necessary. The Charlottetown experience, placed in this larger perspective, was both a necessary and positive experience for all Canadians. It demonstrated the severe constraints of achieving formal constitutional change when there was no broad consensus among Canadians in all regions. The demise of the Charlottetown accord confirmed that there are strict limits to the amount and degree of asymmetrical constitutional arrangements that Canadians are willing to accept.

Yet, the defeat of the Charlottetown Accord did not terminate the intense political struggle over competing models of federalism. The battle continues to this very day. Why? Because this political and constitutional struggle represents competing conceptions of governance – symmetrical versus asymmetrical and bi-national versus multinational federalism. Should Canada's federation continue to function on the basis of two levels of government, each sovereign in its designated areas of jurisdiction and both serving the citizens' needs? Or, should our federation be reconstructed in such a


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way as to create asymmetrical governance by several self-governing nations – both stateless and state-based? Canadians were drawn into this fundamental debate and were given their first-ever opportunity via a referendum to render a decision on the nature and structure of their federation. While Canadians opted to retain the largely symmetrical form of federalism established in 1867 and reaffirmed in 1982, the very nature of this democratic exercise facilitated the final stage in a long process of Canadians becoming a sovereign people. Since *the Constitution Act, 1982*, Canadians live under a Constitutional democracy. They are determined to exercise their rights and responsibilities in defining their own constitutional future.

The Charlottetown Consensus Report's provincial and Aboriginal framers and their supporters continue to argue that Canadians, in rejecting the accord, have lost more than a decade of potentially fruitful political and constitutional development based on an asymmetric model of self-governing nations. They insist that our political leaders and their constitutional advisors have a duty to work towards the implementation of most, if not all, the elements of the accord. In an ironic twist of fortune, it now appears that they might just have their wish, at the very least, for the Quebec elements of the Charlottetown deal. Indeed, certain elements of Premier Robert Bourassa's five demands imbedded in the controversial 1987 Meech Lake Constitutional Accord – demands that were the core of the much broader Charlottetown deal that included an Aboriginal constitution -- are now being put into place.

A de-facto bi-national, Quebec-Canada, asymmetric federation is being achieved incrementally using administrative and legislative measures rather than formal constitutional procedures which would arouse significant and vociferous opposition. Prime Minister Stephen Harper, a Reform Party founder staunchly opposed to the Charlottetown accord, and Quebec's Liberal Premier Jean Charest, a former Progressive Conservative Cabinet Minister in Brian Mulroney's government and chief advocate of the Charlottetown accord, have formed a potentially transformative political alliance to put into place the Quebec elements of the accord. Making a surprising one hundred and eighty degree turn, Prime Minister Harper's government passed a Resolution recognizing "les Québécois and Québécoises" as a nation within Canada. The ultimate goal of the Charest government and its Québécois nationalist supporters is to obtain the constitutional recognition for a bi-national, Quebec-Canada,


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asymmetrical federation. While it is unlikely that Prime Minister Harper will support the creation of a Quebec-Canada asymmetric bi-national federation, he is likely to pursue the implementation of the other asymmetrical elements of the Charlottetown Accord pertaining to Quebec. There include increased control over immigration, appointments to the Supreme Court, a veto over amendments to national institutions, and limitations to the central government's taxing and spending powers in areas of provincial jurisdiction. Canadians will be watching with considerable interest and will exercise their new found sense of sovereignty at the appropriate moment if they think their governments extend formal asymmetry in ways that undermine national unity.

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