

Winnipeg Free Press (Manitoba, CA)
November 24, 2006 A15
Section: Focus

O Canada, O Quebec!

Declaring Quebecers a nation closes door on constitutional change

Bryan Schwartz

SOUND statecraft often involves arriving at practical arrangements that parties can agree on without resolving debates over theories, theologies and labels. Instead of agreeing on symbolic formulations, practical people can simply avoid them whenever practical.

As long as Quebec wants to remain in Canada, there is really no intrinsic necessity to state in the constitution or any other canonical document whether Quebec is a distinct society, a nation, a people, a province with equal legal powers as all others.

A constitution does not have to be a mimetic poem. It is supposed to set out a reasonable flexible framework for future decision-making that can be widely agreed upon, not settle on a unique factual description of any particular current state of affairs.

The Bourassa government's demand for recognition as a distinct society, however, placed the whole symbolic-recognition issue squarely on the constitutional agenda.

It was badly handled in the Meech Lake Accord by including the distinct society language without any context or definition.

That concept was rendered more tolerable to the rest of Canada in the Charlottetown Accord by giving it some definition, and placing in a larger Canada Clause.

Faced with current demands by the Bloc Quebecois for a yes or no vote on whether Quebec is a nation, Stephen Harper decided on a bold strategy: He endorsed the "nation" concept for the Quebecois, so as not to be beaten up by the Bloc for hurting nationalist feelings in Quebec, but wrapped up "nation" in the larger formula of "in a United Canada." The Bloc was angered by the addition. They wanted "nation", clear and simple, full stop.

The prime minister's short-term political calculation might be shrewd. The Bloc goes away frustrated, Quebec (or francophone Quebecois?) receives some symbolic affirmation. The Harper government stands to gain more votes from moderate nationalists in Quebec.

The prime minister no doubt intends to then get on with his real agenda, which likely does not involve reopening constitutional talks. In fact, it might largely centre on reforms that do not require provincial involvement at all, such as changes to the federal income tax to achieve tax relief, income splitting, or incentives for various kinds of investment or conduct.

The Harper formula does render more difficult any return to large constitutional packages, like Meech or Charlottetown. With "nation" on the table, the more moderate "distinct society" is off from the point of view of Quebec. But the rest of Canada is unlikely to accept the "nation" formula. If it refers to the entire population of Quebec, many will object that it does not do justice to the diversity within Quebec. To them, "nation" is redolent of a society that is united by a common ethnicity or language or culture. What about First Nations within Quebec? Or the Inuit? Or anglophones? Or allophones?

The degree of difference from the other provinces will also be an issue. Are other provinces "nations" as well, and if not, why not? Does not Newfoundland and Labrador, for example, have a distinctive history and culture?

If by Quebecois Harper clarifies (and this is unlikely) that he actually meant something more like francophone or even "pur laine" residents of Quebec, there would be concerns about whether the Harper formulation relegates other residents to some kind of second-class status within the province.

As the Harper formula is not attached to any legislation or constitutional instrument, it has no immediate effect on policy. The formula "nation within a united Canada" does not clearly weigh in favour of more powers for the province of Quebec. The "united Canada" part provides an automatic counterweight to any implications to be drawn from "nation." Furthermore, the formula does not say that the provincial order of government is the sole legitimate political representative of the nation.

The prime minister's statement might result in a truce for a number of years over symbolic formulations.

Another possibility is that instead of disappearing, there will be an expanding debate over precisely what the prime minister meant by Quebecois, and how his statement can be reconciled with the status of communities or nations within that nation.

Either way, now that the controversial notion of "national" status for Quebecois has been recognized officially at the federal level of government, it is less likely than ever that the formal constitution will ever contain a "Canada clause" that characterizes the essential demographic character of the country. That is not necessarily a bad thing. The shared home of Canadians might ultimately benefit from more attendance to plumbing and less to portraiture.

Bryan Schwartz teaches constitutional law at the University of Manitoba.