



\$1.99

*Would you buy a car without first seeing the price tag?
Would you buy a house without examining the legal papers?
Would you agree to changes in the document defining your
country without seeing the legal papers or the price tag?
That is what you are being asked to do on October 26, 1992.
What's more, an undesirable constitution is a lot more
difficult to unload than a car or house now yours as a result
of a bad deal.*

***NO DEAL!** explains why the Charlottetown Accord is a bad
deal for those of us who want a strong, democratic and
united Canada.*

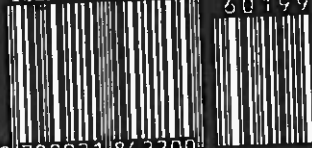
*The Accord will **NOT** end constitutional bickering.
Deborah Coyne and Robert Howse are two of the
co-founders of Canada-For-All-Canadians, a registered
"No" Committee in the 1992 referendum.*

NO DEAL

Why Canadians should reject the Mulroney Constitution

*Deborah Coyne
and
Robert Howse*

ISBN C 921842 25 1



60199

9 780921 842200

No Deal!

Why Canadians Should Reject the Mulroney Constitution

By

Deborah Coyne and Robert Howse

Voyageur Publishing

82 Frontenac Street, Hull, Quebec J8X 1Z5 (819) 778-2946

September 1992

First published in 1992 by
Voyageur Publishing.

Publicist: Elizabeth Jefferson.
1646 Bathurst Street, Toronto, Ontario.
(416) 784-9608

Editor: Sean Fordyce.
82 Frontenac Street, Hull, Quebec.
(819) 778-2946

Cover Design: Kim Ford.
A Million and One Designs
82 Frontenac Street, Hull, Quebec.
(819) 778-2946

Production Co-ordination: George McKenzie.
GEMM Graphics
2022 Kingsgrove Crescent, Gloucester, Ontario.
(613) 748-6613

Copyright © Deborah Coyne and Robert Howse

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording or any information storage and retrieval system without permission in writing from the publisher.

First Edition September, 1992.
ISBN 0-921842-20-1

Printed in Canada

2

No Deal!

Introduction

Canadians now face a national referendum on the constitutional deal concocted by Prime Minister Mulroney, the premiers, territorial and aboriginal leaders. As citizens of a supposedly mature liberal democracy, we should be entitled to make an informed judgment on the merits of the deal, after an extensive and open debate. We should feel totally free to accept the deal if we think that it will strengthen our nation or to reject it if we do not.

Unfortunately this is not the case. Our leadership is treating us as sheep rather than informed citizens. In the tradition of old-style dictatorships, they are closing ranks against the people and demanding that we click our heels and fall in line.

We are being asked to judge the deal without an opportunity to study the legal texts and without an informed debate on its merits in the legislatures of the country. This is absurd and makes a mockery of the referendum process. Who would ever buy a house without checking on all the legal details or knowing the price in advance?

Second, we are told that there has already been such extensive consultation, no more is necessary. This is a false self-serving statement from those who cannot defend the deal on its merits. Not only are there several crucial new elements in the deal that only emerged on August 28, such as the 25 per cent floor for the proportion of Quebec MPs and the half-elected, half-effective Senate, but the orchestrated consultation that has occurred has been less than fair. Many of us will not soon forget how Canadians

No Deal!

3

who raised doubts about the distinct society clause were shouted down during the Castonguay-Dobbie hearings.

Moreover, aboriginal women's voices have been silenced in these negotiations — making a mockery of the claim that the process was conducted in an inclusive and democratic manner. The Federal Court of Appeal has ruled that the Mulroney government broke the highest law in the land when it shut the Native Women's Association out of the bargaining room (*Native Women's Association of Canada v. Canada*, August, 1992).

Finally, we are told that the deal is a delicate compromise that cannot be questioned. We must simply accept any bad with the good. This, too, is intolerable. We do not demand perfection in constitutional reform. We do expect excellence from our leaders. Canadians deserve better than a constitution that requires us to hold our noses.

We must insist on a free and informed debate and remind our leaders that they only hold power in trust for us and should not abdicate their responsibility to allow us a real choice in this referendum. Our leaders are in breach of this trust if they threaten that a vote against the deal will mean the end of Canada, or resort to intimidation and fearmongering.

The constitutional status quo, while not perfect, has served us well for the last 125 years. To argue otherwise as our leaders have done, represents one of the most divisive and dangerous myths that has been propagated in the last five years (in addition to the myth that somehow Quebec is excluded from the constitution). Aboriginal self-government and senate reform are of high importance but, surely, we are mature enough as a nation to take the time we need to make a constitution that will earn the respect of our children and our children's children.

Moreover, our leaders are deluding themselves and misleading us when they say that this deal will put an end to constitutional wrangling. For the Quebec government, this is only the beginning. Quebec officials are already asserting that, with this deal, they eventually will achieve the massive decentralization put forward in the Allaire Report. This will be done through the new mechanism of constitutionalized intergovernmental agreements by which Ottawa will continue to spin off more and more legislative powers to provinces à la carte. As well, the threat of outright separation will remain the same. As Premier Bourassa recently stated "we keep our right to self-determination and our right to choose." (*Globe and Mail*, p. A7, September 19, 1992) Of course, the Parti Québécois as the main opposition party will continue to encourage the idea.

In many ways, this accord is little more than an agreement to disagree in the future. Many of the tough and divisive issues about money and power are postponed to future negotiations between the the provinces and the federal government. More than 25 such deals are required in order to make the accord of August 28 a reality. If Canadians support this kind of arrangement, they will have created an endless legacy of constitutional bickering for the sake of a dubious, short-lasting constitutional peace.

Why is this deal so dangerous? Why does it not reflect a viable vision of the country for the twenty-first century? In the pages ahead, we shall be elaborating on many of the following 11 points:

1. Under this deal, the national government will effectively be unable to implement national programs and policies with minimum national standards in critical areas, to help us meet the challenges that lie ahead. (The unenforceable social charter cannot create social programs where the federal government is powerless to act.)

2. The coherence of the national government will be seriously eroded through a confusing mix of bilateral and multilateral federal-provincial agreements. These agreements will place policymakers in a legal straightjacket.

3. This deal involves huge financial commitments by federal taxpayers to pay the provinces in perpetuity to exercise new powers. These commitments are thoughtless; not to mention contrary to the principle of responsible government. None of our leaders have even bothered to try and tally them up.

4. The Canadian economic union likely has been weakened, rather than strengthened. The federal government will effectively be excluded from any meaningful role in labour market training, and therefore unable to take steps to improve the productivity and skills base of the national labour force, which is an essential source of national competitive advantage. Explicitly excluding the federal government from the training field, notwithstanding the vague lip service paid to the maintenance of national objectives, will obstruct long-needed reforms to replace production subsidies and trade restrictions and other adjustment-retarding policies with adjustment-oriented measures aimed at giving workers the capacity to find employment outside depressed industries or regions.

5. Under this deal, the exclusion of federal jurisdiction over environmentally sensitive industries such as forestry and mining will gravely impair the important federal role in environmental protection. Since forestry and mining represent a considerable percentage of Canadian exports, what are the implications for a coherent federal international trade and related industrial policy?

6. Culture "within the provinces" will become a matter of exclusive provincial jurisdiction. This is a potentially enormous transfer of powers since no one really knows the limits of the meaning of "culture" or how to distinguish cultural matters "within the province" from so-called Canadian cultural

matters. As a consequence, our cultural policy will be tied up in contentious constitutional litigation for years to come.

Moreover, French speaking senators, most of whom may be appointees of the Quebec government, will be able to veto what is left of so-called French culture at the national level. This will include legislation involving the CBC and other national cultural institutions. As well, English speaking senators will be able to veto federal laws to protect the francophone minority in Canada.

7. Under this deal, it will be henceforth even more difficult to repeal the notwithstanding clause in the Charter and thereby assure full and complete protection of individual and minority rights, including equality rights. The use of the notwithstanding clause has been extended to new aboriginal governments, against the wishes of the Native Women's Association of Canada, an organization which has been unconstitutionally excluded from the discussions.

8. The individual and minority rights in the Charter will be undermined by Quebec's distinct society clause. This is unacceptable. The Charter is there to protect individuals and minorities from the "tyranny of the majority." It is not there to allow Quebec's French-speaking majority (and so-called "unique culture") to suppress individual rights, especially when that majority controls the Quebec government and appears to be doing a good job with its existing powers in preserving and promoting French language and culture. Moreover, a June 1992 CROP opinion survey found that over 70 per cent of Quebecers identify with the Canadian Charter.

9. Under this deal, the two founding nations theory is adopted, something which is both historically incorrect as well as irrelevant to the Canada of the future. Special status for Quebec, whether through a distinct society clause or special bilateral

agreements, is still not a viable option for long-term constitutional peace.

While the Canada clause reference to the commitment to the vitality and development of official language minorities may be regarded as positive, these minorities may be forgiven for being sceptical of the real strength of this provision. Will Bob Rae, for example, now finally declare Ontario to be officially bilingual? Will Alberta start supporting a more generous interpretation of the existing minority language and education rights?

10. Under this deal, the federal government will only be able to appoint judges to the Supreme Court of Canada from lists provided by the provincial governments. Among other things, this transfers a closed door appointment process from Ottawa to the provincial capitals. A valuable opportunity to negotiate a more open and democratically legitimate appointment mechanism was lost.

11. Finally, under this deal, if we discover that this or that reform is not working well in the future, change will be virtually impossible since all provinces now have a veto over federal institutions and can easily opt-out of any other type of reform such as a transfer of powers to the federal government, with full compensation.

Rejection of this deal is a legitimate choice. It will not be the end of Canada. It simply means that at this particular time, our leadership could not forge the extraordinary consensus necessary to legitimize the most complex set of constitutional reforms in the history of Canada. As Quebec journalist Lysiane Gagnon has suggested: "A 'no' vote will simply return us to the status quo ... The Mulroney government would fall. Its successor would not dare try such a dangerous exercise. Quebec would still be part of Canada" (*La Presse*, September 5).

I. The Distinct Society Clause vs. The Charter and Multiculturalism

Quebeckers should be proud. They have made a special contribution to Canada and an indispensable contribution to the vitality of French in North America.

Most Canadians want to recognize and celebrate both of these contributions. So do we. The question is how it should be done. In our view, the contribution of Quebeckers never depended on special status or special privileges, and nor should it now. Our constitution protects the rights of francophones *as individuals* — both with respect to education and to the vitality of their language in the public institutions of Canada. It gives to Quebec's government essentially the same powers as any other province in Canada. Within this framework, Quebec and Quebeckers have been able to evolve enormously the place of French within their own province — and within all of Canada.

Moreover, the framework has proven to be flexible. It has permitted special arrangements with Quebec through non-binding, administrative agreements without entrenching special status or discriminating against other groups or provinces. Perhaps most importantly, with the Charter of Rights and Freedoms, it has been possible to set the consideration of Quebec's special needs and character upon a bedrock of individual rights *held equally by all Canadians*.

Official bilingualism and the Charter, we believe, have contributed significantly to the long term reconciliation of French and English speaking Canadians. Bilingualism has become acceptable and even attractive to many people in parts of Canada where it was barely tolerated before — with some of the highest increases in French immersion enrollments occurring in B.C. and Alberta!

All of this has been made possible by a sense that the increasing presence and insistence of the French fact in Canada was occurring within a fundamental framework of equality and fairness — in which all Canadians shared and from which all could derive benefit.

Since the beginnings of the Meech Lake Accord process, however, much of this positive atmosphere has changed. Instead of hope for a bright new future together, English-French relations have once again become preoccupied with settling old scores, with each side accusing the other of being more intolerant and less open.

The core problem was the choice to embed a concept of special status — of special powers owed to one group in relation to others — in a constitution founded upon equality. The distinct society concept started off innocently enough — the idea (in the Quebec Liberal Party's 1985 platform) was to put some recognition of Quebec's special contribution in a constitutional preamble. Soon, however, it got hijacked by Brian Mulroney and his leading constitutional adviser at the time, Lucien Bouchard.

Bouchard's idea was that instead of the distinct society being a way of healing old wounds, it would be a route to reopening the debate about special status. After losing the 1980 referendum, Bouchard and many other separatists became disillusioned with the prospect of getting the Quebec people to leave Canada. They were looking for another route to sovereignty association. Meanwhile, Brian Mulroney's Tories were looking for a political base in Quebec.

In his autobiography, Bouchard describes the strategy behind the Meech Lake process:

I supported a policy of national reconciliation in order eventually to espouse 'le beau risque.' The ultimate objective was to fundamentally redo the division of powers for the benefit of Quebec ... I imagined that the ratification of Meech would create a spirit of openness towards the historic demands of Quebec. One could hope that ... Quebec would be able to put on the table a proposal for fundamental restructuring of the Canadian constitution (*À visage découvert* [Unmasked] pages 247-248).

As former Parti Québécois adviser Daniel Latouche put it in his first (cautious) reaction to the Meech distinct society clause, "this should just be the beginning" (*Le Devoir*, May 12-13, 1987).

Having begun as a lever for getting more powers for Quebec — in future lawsuits as well as in future constitutional talks — how did the distinct society become a tool for weakening the protection of the Charter of Rights and Freedoms itself?

At the beginning of the Meech process, not even the Quebec government was seeking a method of getting around the Charter. Instead, it, too, viewed the distinct society clause as a basis of future claims for more powers. In his famous Mont Gabriel speech, where he stated the conditions of Meech, Gil Rémillard said that it would not be difficult for Quebecers to accept the Canadian Charter. On this, at least, he was clear: "The Charter ... is a document of which we can be proud, as Quebecers and Canadians. ... We want Quebecers to be as well protected in their fundamental rights as other Canadians."

By the time of the initial Meech Lake negotiations, however, it was widely thought that the Supreme Court of Canada would soon rule

on Quebec's controversial sign law — which banned all languages but French from most commercial signage. The law in question was fundamentally unjust and was believed by many to violate Charter guarantees of freedom of expression. This law had its origin with the separatist Parti Québécois, and the official policy of the new Liberal government of Quebec was that it should be reformed.

Despite these promises of reform, Bourassa and Rémillard, like most politicians, were extremely sensitive to the feelings of the “swing” voter — who might move back to the Parti Québécois if provoked or upset. If the case on the sign law could be re-fought in the future on the basis of a distinct society provision, then Bourassa and Rémillard could justify breaking their promises and use the notwithstanding clause to repass the law — thereby appeasing the feelings of voters with Péquiste sympathies.

One of Canada's best lawyers, then Ontario Attorney-General Ian Scott, very quickly picked up on the possibility that the Bourassa government might try and use the distinct society clause to get out of its political dilemma on the sign laws. Scott, a well-known civil libertarian, was deeply troubled by this possibility and we now know that during the final negotiations of what would become the official Meech text, he pressed hard for an explicit provision that would protect the Charter from the distinct society clause (this is well-described by one of Scott's principal advisers, Professor Patrick Monahan, in his book *The Meech Lake Story*). Scott, not surprisingly, was turned down flatly by Bourassa and Rémillard.

Later on, of course, the federal government and the pro-Meech provinces would argue that the clause did not endanger the Charter — the only reason for not explicitly protecting the Charter, they said, was that it was too late to re-open the Accord. However, as we just described, Quebec's negotiators explicitly refused such a

protection, during the talks themselves, while changes were still being made to the Meech text!

In the Charlottetown Accord, the Meech distinct society clause is divided into two parts — both of them in the Canada clause. It should be stressed that this clause is *not* a mere preamble or declaration of general principles. *It is mandatory and binding on the courts in every constitutional case.*

The major difference with Meech Lake is that now Quebec's distinct society is defined largely in terms of a “French-speaking majority,” a “unique” culture and the civil law tradition. In our view, these definitions make the clause even more offensive and dangerous than that in the Meech Lake Accord.

Under the Meech provision, one could at least argue that people of other cultures and languages also made up part of Quebec's distinctiveness, and hence were deserving of protection along with the traditional francophone majority. The new wording is brutally clear. To be fully part of what makes Quebec distinct, one must not only be a member of the French-speaking majority but also belong to a “unique culture.” This is profoundly insulting and degrading to millions of people who have come to Quebec over the years and have made profound contributions to its social, cultural, legal and intellectual life — i.e. to all the positive aspects of Quebec's distinctiveness. This includes individuals like the late Alice Parizeau who have come from other cultures and gone on in Quebec to add importantly to the *francophone* literary heritage.

While Quebeckers are no more racist than other Canadians they are no less racist, either. We must face the reality that we live in an age that philosopher Michael Walzer has characterized as one contaminated by “the new tribalism.” The dangers of intolerance and misunderstanding are tangible and a constitutional provision

that legitimates the treatment of people of other languages or other cultures as if they were not fully part of Quebec is a time-bomb. We would oppose such a clause, no matter what province or which ethnic group were demanding it.

Admittedly, attempts have been made to try and ensure that the distinct society is not used to promote intolerance and discrimination. However, well intended, these attempts may actually increase the danger. Because they put the protection for minority language rights in *weaker* language than the powers that flow from the distinct society, these provisions only *reinforce* the interpretation that the majority's interests take precedence.

While Quebec's legislature and government has the "role" to preserve and promote the majority's "distinct society," the *French* text of the Canada clause — the text that will give the clause its political, if not legal, meaning in Quebec — states that Canadians and their governments are merely "attached" to the vitality and development of linguistic minority communities. The English version refers to "commitment" that arguably should be translated into the much stronger French word "*engagement*." Attachment is a word used for positive feelings that can come and go, not obligations that are the bedrock of the social contract. We are not surprised when someone says they are "attached" to a favourite armchair or a favourite picture, but what would we think of a father who said he was merely "attached" to his children or a soldier who said she was merely "attached" to her country?

Moreover, Canadians and their governments are now said to be "attached" to collective rights as well. Collective rights are a euphemism for the right of one group over other groups or individuals. Historically, they have been an ideological weapon of the extreme left and the extreme right — aimed at seizing the moral high ground of rights talk and neutralizing the liberal

concern with the dignity and worth of the individual. In our view, it is the individual that comes first. After all we have seen in this century, right up to Sarajevo, Osijek and Vukovar, is it not reasonable to insist that any durable model for ethnic accommodation and justice must rest on an unshakeable, *prior* affirmation of the dignity and freedom of the individual?

Finally, the Canada clause creates a hierarchy of rights to government action and attention. Some groups' claims imply commitments on the part of government (usually where language, culture and ethnicity define the groups). In other cases, a mere principle is stated, for example gender equality, without implying the need for any positive government action to further the situation of women. Worst of all, some vulnerable groups, such as persons with disabilities, have been left out of the Canada clause altogether and apparently have to content themselves with the hollow promise that their concerns will be addressed *after* the referendum. The clause is a genuine and disturbing reflection of the 'new tribalism' — ethnicity counts for more than other aspects of human identity, such as gender, that may create at least as much vulnerability and be justly deserving of at least as much government attention. Again, the Canada clause is not a wish-list. It is binding on the courts in their interpretation of the entire constitution.

Distinctiveness as such is not a legitimate basis for limiting rights. Every liberal democracy has its distinctive, special features. Nations with diverse language and ethnic communities are increasingly the norm in a modern world. But the very meaning of liberal democracy is that such features are to be promoted and protected only in a way that is consistent with the equal rights of all citizens. This is the rigorous, self-imposed standard that makes us a free as well as a democratic society.

There are some who believe in individual and minority rights, but think that these are issues that have to be worked out in Quebec itself. One reason Premier Wells, for example, dropped his opposition to the distinct society clause was that he was persuaded its effects on the Charter could be contained within the borders of Quebec.

With all due respect to Premier Wells, we think this view is short-sighted. First of all, the distinct society clause may well affect mobility rights, which are not subject to the override and which inherently concern other parts of Canada since they include the right of Canadians to move freely in and out of the various provinces (including the right of professional and business people to gain a livelihood across provincial boundaries).

Much more importantly, as philosopher Michael Walzer recently remarked, "the standard rule of intertribal relations is: do unto others what has been done to you" (*Dissent Magazine*, Spring 1992, page 169). A lower standard of tolerance towards minorities in Quebec cannot but reduce the level of tolerance towards the francophone minority elsewhere in Canada. This intolerance will itself provide further justification for "reprisals" against minorities within Quebec. It is impossible to separate the use of the override on Quebec's language laws from the failure of some provinces to honour their commitment to minority rights for francophones. Most Quebecers recall the emotional impact of watching a few fanatics stomp on a Quebec flag. The lesson is clear — we must stop the spiral of intertribal recriminations and recognize the fundamental truth that until everyone's rights are secure, no one's rights are secure. The distinct society clause denies this truth. Far from giving us harmony and tolerance, the only peace, if any, will be the peace of the graveyard in which the casualties of an escalating spiral of misunderstanding, mistrust and intolerance are buried.

Ever since its appearance on the Canadian scene, the distinct society clause has created nothing but misunderstandings and tensions in English-French relations. Old grievances have been revived and new sources of animosity have been created. It defies imagination to believe that entrenching the clause in the constitution would do anything but make this abysmal track record many times worse.

II. The Federal Spending Power and the Future of Canadian Social Programs

Canadians rightly see their social programs as one of the fundamental, unifying features of the country — it was not necessary to spend millions on the Spicer Commission to learn this basic insight.

Over the last few years, at the political level, the Mulroney government has launched an all-out assault on these programs by cutting funding dramatically, both to provinces and to disadvantaged individuals. The result of these largely haphazard and arbitrary cuts has been well-described by Queen's economist Tom Courchene, a sometime conservative himself and occasional adviser to the Mulroney government: "the federal-provincial transfer system that underlay this social policy infrastructure is now in shambles" (*In Praise of Renewed Federalism*, 1991).

The federal government claims that it must reduce the deficit. However, responsible, middle-of-the-road economists such as Queen's professor Robin Boadway question whether it can be efficient to deal with public debt by running down the country's human capital — the future basis of its prosperity. Once these programs have deteriorated past a certain point, re-establishing them would likely be prohibitively expensive. The Mulroney government — while cutting back on medicare and welfare transfers — has not hesitated to commit billions to weapons purchases based on outdated "Cold War" views of Canada's military role.

Canada's social safety net does require reform. We must look at ways to make welfare recipients less permanently dependent on public assistance and turn Unemployment Insurance cash into new skills and new opportunities. Also, we must develop a health care system less oriented towards enormously expensive institutionalized care.

Instead of federal leadership in these areas, we have been experiencing federal abdication. The Mulroney government reduces the transfers and leaves it up to the provinces to make cuts in services where they please (with few exceptions). Already, in the absence of federal guidance, our safety net is starting to resemble a patchwork quilt full of holes. Medical services are being delisted from public health insurance in province after province without any informed national debate about what is essential and what is not.

Now, just in time for the next election, the Mulroney government is aiming to entrench in the constitution itself the abdication of federal leadership in social policy. What better way to pre-empt the popularity of the Liberals and NDP than to make their promises on revitalizing the social safety net a *constitutional impossibility* — and, more brazen still, to have gotten them to go along with it by using the national unity threat!

This latest technique of dismantling the social welfare net in Canada that the Mulroney government has chosen is a limitation on the federal spending power.

At first glance, limiting this power seems perfectly rational. Why, after all, should the federal government be able to "invade" the jurisdiction of the provinces just by spending money, or offering hand-outs?

To understand why the spending power is so important, we have to go back to the 1920s, 30s and 40s, when Canada's leaders were trying to pioneer a social safety net in this country. Not surprisingly the 1867 constitution said little about social programs but as these programs began in the 20s and 30s, they were challenged before the courts as violations of provincial authority over "property and civil rights within the province." The British law lords, whose Judicial Committee was Canada's court of last resort at the time, seized on the words "property and civil rights" as a basis for stopping the Canadian welfare state dead in its tracks. They sometimes saw provinces as protectors of private property against some kind of creeping socialist centralism. Under the 1867 constitution, the federal Government's power to make "laws for the peace, order and good government of Canada" could logically have been read as implying a federal capacity to set national standards of welfare. Instead, the British law lords focussed on the provinces' rights to protect property interests.

Today still, Canadians live in the shadow of these constitutional rulings — made by (mostly) an aristocracy in another country. Two ways were found to get over these hurdles and build social justice across the land. First of all, in one or two cases (e.g. unemployment insurance) the 1867 constitution was formally amended to repeal the law lords' decisions and give the federal government the right to act. But — as will surprise no one — formally amending our constitution has never been easy. So the other way around the Judicial Committee was to say that, as long as it was exercising its prerogatives to tax and spend, the federal government could intervene in areas where it was prohibited from regulating directly.

The spending power is a less than ideal method for giving the federal government a say in the social safety net. Perhaps, had history unfolded differently, a more direct method could have been

found. As the political thinker Alexis de Tocqueville once commented, only a people starting from scratch has the luxury of making its laws conform entirely with logic. Today we are left with the reality that national social programs and national standards in provincial programs, have been built up through the spending power. This is a system that has united Canadians and made Canada a great country in which to live.

Thus, the provincial complaints about the spending power — while they possess a certain formal logic — ignore the real social contract between Canadians today. It is a social contract that, finally, the Supreme Court itself has recognized — affirming that the spending power does have a legitimate basis in the constitution. (*The CAP Reference; YMHA v. Brown*).

As with Meech Lake, the Charlottetown Accord, would allow any province to opt out of any new federal shared-cost program or initiative and receive financial compensation, provided that the province merely puts in place a program or initiative compatible with national objectives. Not only do "national objectives" clearly not mean "national standards" but it would be difficult to find a weaker condition than "compatible with."

Advocates of the Accord will maintain that health care and welfare are safe, because this provision applies only to new programs. But, as we described above, if it is to survive and flourish Canada's social safety net will need some basic overhauling in the years and decades to come. What if we wanted, as many reformers have advocated, to replace traditional welfare with income supplementation or a guaranteed annual income? Would this count as a "new" program, or merely reform of an old one? The fact is that "new" has no self-evident meaning in law.

Of course, the advocates of the Accord will say, there is nothing that actually — in law — prevents the federal Government from establishing a new program provided it allows provinces to opt out with compensation. But what federal government would go to the trouble of raising money from the taxpayers of Canada, to give it away to provinces to spend more or less as they please — i.e. without being able to mandate some national standards? Under these provisions, we can say goodbye for ever to the possibility of a national child care program — something that will no doubt give comfort to Mulroney's "family caucus" and to every other reactionary in the country.

As Quebec constitutional affairs minister Gil Rémillard insisted at the Meech Lake negotiations, the term "objectives" does *not* mean standards or criteria. Professor Patrick Monahan, a Meech Lake supporter who was present as a leading adviser to Ontario, recalls: "Rémillard went so far as to argue that the "objectives" did not necessarily have to be tied to the specific shared-cost program being launched by Ottawa. Rémillard gave the example of a federal program to build sidewalks across Canada. He suggested the province could opt out of the program, receive cash from Ottawa and use the money to build a bridge." (*The Meech Lake Story*, page 105).

This continues to be the view of the Quebec government about the meaning of national objectives, and is now being expressed publicly. A two-page advertising spread boosting the Charlottetown Accord, paid for by the Quebec Liberal Party, appeared in two major Montreal newspapers on September 5. It describes the spending power provisions in this way: "Quebec can from now on withdraw from any new federal shared-cost program and get the financial compensation that it deserves." The supposed obligation that Quebec set up a program that is compatible with national objectives

is not even mentioned — perhaps because it is regarded as a meaningless symbolic concession to the rest of Canada.

Moreover, the apparently non-enforceable social charter proposed in the Charlottetown Accord is hardly a substitute for the capacity of the federal government to secure our social rights. How can an unenforceable statement of general principles guarantee the needed programs and policies, in the absence of the powers and incentives needed for effective federal action?

In the weeks to come, defenders of the Charlottetown Accord will argue that limiting the spending power is a first step towards bringing government "closer to the people." They will claim that the spending power is an example of domineering federalism that needs to be curbed.

Yet the exercise of the spending power has always been hand in hand with an approach to delivery of programs that respects diversity and the special needs of different communities. Throughout recent history, federal involvement in social policy has been characterized by acceptance of considerable variation from province to province in the nature and scope of programs. However, where there is a strong democratic consensus for clear national standards, the spending power does permit the federal government to insist on such standards. The effect of the Charlottetown Accord will be to gravely weaken this power — and without any effective alternative route to national standards.

III. The Division of Legislative Powers

As the Spicer Commission found and as was evident from the Halifax Conference on the Division of Powers, most Canadians are strongly opposed to further decentralization of our already very decentralized federation. Canadians are thoroughly fed up with our politicians talking incessantly about trading legislative powers without articulating precisely what they want to do with these powers and whether this will advance the public interest and social justice.

Moreover, as Quebec political scientist Stéphane Dion persuasively argues, most Quebecers have never been really concerned about a transfer of powers between Ottawa and Quebec as an end in itself. Dion criticizes the current debate for failing to consider the issue of the division of powers from the point of view of improving the quality of services offered to Quebecers, something which would bring into question the need for a massive transfer of powers from Ottawa to Quebec.

In many cases, Quebecers are more critical of their provincial services than other Canadians. For instance, at the very time that Quebec's constitutional negotiators were insisting on federal withdrawal from the worker training and manpower fields, Quebec business leaders were denouncing the Quebec government's own, recently revealed strategy in this area ("Des gens d'affaires dénoncent le projet de loi sur la main-d'oeuvre," *Le Devoir*, June 17, 1992, page 7). With respect to culture and language, Montreal novelist Pierre Billon asks:

If our language is in danger, how is it possible to explain the poverty of (Quebec) government action to protect it? ... Our politicians declare that our cultural identity is threatened, but this threat doesn't seem to them all that serious, if one is to judge by the modest spending and weak programs for arts and culture. ... It is claimed that the powers that Quebec has under the existing constitution are insufficient to protect its cultural specificity. *The politicians who make these arguments would be more convincing, if they were to exercise fully the powers they already have before asking for new ones*" (*L'Actualité*, December 1991, emphasis added).

The sell-out of powers to the provinces in the latest constitutional package illustrates well the lack of any coherent vision of the future. First, unlike in the earlier federal proposals or the Beaudoin-Dobbie Report, the distinct society provisions of the Canada clause are explicitly the basis for interpreting the whole constitution, including the division of powers. It is thus predictable that Quebec will eventually emerge with special powers in many of the so-called grey areas of policy which are not explicitly set out in the constitution.

In addition, the package includes a proposal providing for a confusing mix of bilateral and multilateral federal-provincial agreements in a wide range of areas and their entrenchment, however complex, in the constitution. This will result in not only a patchwork quilt of legislative powers among provinces in many areas, but also confusing lines of accountability and little sense of common national purpose. It will generate an uncontrolled and incoherent asymmetry in powers, wreaking havoc on our economic union. Regulatory chaos could be created with respect to interprovincial trade and economic activity. This is something about which businesses certainly should be particularly concerned,

not to mention average Canadians. Nothing should automatically be a part of the constitution without adequate second thought.

The fact that these agreements may automatically expire at the end of five years but be renewable by a vote of the legislatures does not change this assessment. Once a significant alteration in policy responsibility takes place, in some fields it will most likely be politically impossible for the federal government to recover the power after five years of building up entrenched provincial bureaucracies and vested interests.

In addition, the entrenchment of complex agreements including detailed funding formulae will quickly turn a constitutional document which ought to reflect general principles and objectives, into a version of the incomprehensible Income Tax Act! Finally, the role of federal MPs from provinces which have complete jurisdiction over a certain policy area will certainly be called into question. Eventually, Parliament could become unworkable with different classes of MPs, different voting privileges and so on.

The explicit devolution of powers proposed in the latest package involves the following areas: culture, immigration, labour market development and training, regional development, telecommunications, tourism, forestry, mining, recreation, housing, and municipal and urban affairs. In some cases, this devolution will be accomplished by complex bilateral agreements and only on the initiative of the provincial government. In all cases, the federal government will be weakened in a fundamentally unaccountable and undemocratic way that involves behind-the-scenes horse-trading and brokering between governments. For example, in the case of telecommunications, secret federal-provincial negotiations to devolve powers to several provinces are already well advanced.

There are few clear indications, from any of the parties to the negotiations, of which actual policies and laws would shift from the federal to the provincial level under these agreements and the implications for the ordinary citizen. For example, in the case of the exclusion of federal jurisdiction over housing and urban affairs, is it intended that the provinces have the legal right to dismantle the Canada Mortgage and Housing Corporation or insist that the federal government withdraw from the provision of low-cost housing to Canadians?

Admittedly, many of these fields are already within provincial jurisdiction. The issue is whether to exclude all the concurrent federal involvement in areas where it has obviously been considered legitimate and necessary over the years.

Environmentally-sensitive industries

For example, as mentioned earlier, excluding federal jurisdiction over environmentally sensitive industries including forestry and mining will impair the important federal role with respect to environmental protection. Also, since these industries represent a considerable percentage of Canada's exports, what are the implications for the federal power over international trade and related industrial policy?

In the case of the environment, supporters of the Charlottetown Accord will undoubtedly argue that the federal government can use other heads of power to protect the environment with respect to forestry and mining. However, an all-party House of Commons Committee that examined many of these proposals for devolution when they first appeared (in the document *Shaping Canada's Future Together*) expressed serious concerns. The concerns were in part based on the intention to eliminate the federal declaratory

power — one of the important instruments available to the federal government to bring “works and undertakings” within federal environmental control. The Charlottetown Accord would, in fact, provide for the abolition of this power, subject only to the grandfathering of declarations made in the past.

The all-party Committee made a number of major recommendations as to how environmental concerns should be reflected in proposals for renewed federalism — including that “the significance of the ‘declaratory power’ be clarified with respect to the ability of the federal government to maintain and enhance environmental quality and to promote sustainable development, prior to any changes to Section 92 (10)(c) of the constitution” (Recommendation #10, “Environment and the constitution,” House of Commons Standing Committee on Environment, January 1992). In addition, the Committee recommended that proposals for renewed federalism explicitly protect federal environmental jurisdiction in several other ways. *None of these proposals were taken seriously in the negotiations leading up to the Charlottetown Accord — none of them are explicitly reflected in the Accord itself.*

“Culture”

Similar concerns must also be raised about making culture a matter of exclusive provincial jurisdiction, even if this is restricted to matters “within the province.” This is a potentially enormous transfer of powers since no one really knows the limits of the meaning of “culture.”

As Queen’s University Law Professor Dan Soberman has recently remarked, some cultural claims advanced by even supposedly moderate Quebec nationalists, i.e. that the Great Whale Project is vital to Quebec’s future cultural security, threaten to encompass

“the whole of economic policy” (*Network on the Constitution Newsletter*, May 1992).

Admittedly, the Supreme Court of Canada will not likely go that far in interpreting the meaning of culture. But what happens when the nationalists claim another “betrayal” of their expectations from renewed federalism? Do we give them even more powers? Do we risk once again break-up and separation? Here again, we see how the Charlottetown Accord merely sets the stage for permanent constitutional warfare.

At the very least, the Accord will almost certainly obstruct any coherent national cultural policy, notwithstanding the recognition of the continuing responsibility of the federal government for Canadian cultural matters and for national cultural institutions. Since there is no guidance as to how to distinguish cultural matters “within the province” from so-called Canadian cultural matters, much of our cultural policy will be tied up in contentious constitutional litigation for years to come. The implications are very serious and simply have not been thought through in the rush to get a deal.

Manpower, Labour Market Training, and Unemployment Insurance

Likewise, little analysis has been made of the exclusion of federal jurisdiction with respect to labour market development and training. The productivity and skills base of the national labour force are an essential source of national competitive advantage. Explicitly excluding the federal government from the training field would make it difficult, if not impossible for long-needed reforms to replace production subsidies, trade restrictions and other inefficient federal policies with adjustment-oriented measures aimed at giving

workers the capacity to find work outside depressed industries or regions.

Many Canadians will remember the promises Brian Mulroney made during the 1988 election campaign about adjustment policies to accompany the Canada-US Free Trade Agreement. Many will remember how these promises were broken — the government claimed you could never know if anyone had lost their job because of free trade and so you could never say who was entitled to help. Now we are faced with a free trade arrangement with Mexico as well — and unions in both Canada and the United States are pressing for adjustment provisions. What better way for Mulroney to refuse these demands at the next election than to point to the constitution and say, like the character Valmont in *Dangerous Liaisons*, "it's beyond my control."

The provisions of the Charlottetown Accord do pay some lip service to a federal role. Thus it is contemplated that the federal government be allowed to set "national policy objectives." However, it is unclear from the text whether these objectives would even apply in provinces that opted for complete federal withdrawal from the field. And any mention of such national objectives is missing from the Quebec Liberal Party's public explanation of the labour market training provisions in the Charlottetown Accord (advertisement in *Le Devoir*, September 5, 1992, page A-7).

Even where provinces do *not* choose to exercise exclusive jurisdiction, the Accord would give them the right to constrain federal spending through court-enforced bilateral agreements. Instead of getting on with the pressing task of retraining workers for global competition, governments (and unions) would end up arguing in court about whether provincial policies met national objectives, about how much money each province was entitled to

receive from the federal treasury and whether one province's bilateral deal was sweeter than another's.

The Accord retains formal federal power over unemployment insurance but only with respect to income support and related matters. Hence, the federal government is prevented from creative restructuring of Unemployment Insurance to help develop workers' skills or serve other important goals related to the special needs of women and disabled people in the workplace. In addition, the federal government would be required to enter into agreements with the provinces concerning "administrative arrangements" pertaining to Unemployment Insurance.

Without a legal text to examine, we could take "administrative arrangements" to mean almost any aspect of the program. For example, provinces could be given powers to determine benefits, or to convert UI funds into pork-barrel subsidies for local industries.

Boosters of the Charlottetown Accord will claim that these are mere speculations or nightmare scenarios. Then let them produce for Canadians the legal document that shows such fears to be unfounded!

Immigration

In a different way, but with the same results, the federal power in respect of immigration will also be significantly reduced. All provinces will henceforth be able to require that Ottawa conclude an agreement on immigration. Thus, just at the moment when we require a coherent national immigration policy to help meet the demographic challenge of our aging population, the spectre is raised of eleven (federal and provincial) different and competing immigration policies and a severe weakening of the federal role in

providing new Canadians with a sense of belonging to Canada as opposed to the particular province to which they initially immigrate.

What are intended as the contents of these agreements on immigration? On this, the text of the Charlottetown Accord is mysteriously silent. Either because the Liberal Party of Quebec has already seen some secret legal texts or has received certain assurances from the Mulroney government, Bourassa seems to have a much more specific notion of what was given to the provinces at Charlottetown: "Quebec will become responsible for the selection and linguistic, cultural, social and economic integration of immigrants on its territory. *And this will be in the Canadian constitution.*" Canadians must ask themselves why Mr. Bourassa is making promises to Quebecers that have not been written into the Charlottetown Accord — at least not in any version being made available to the public. Anyone with concerns about such promises must have second thoughts about giving Mulroney a blank cheque on the 26th of October.

Dollars and (Non) "sense"

In any event, the vague provisions for the federal government to provide financial compensation to provinces when transferring jurisdictions under intergovernmental agreements, that are sprinkled throughout the latest constitutional package, are the height of fiscal irresponsibility. Taxpayers of Canada will be forced to fund a vast range of provincial programs and activities, something that will seriously impair Parliament's ability to allocate tax revenues according to the democratic will of the Canadian people.

What kind of compensation is being required? Are we speaking of a one-shot payment to the provinces, or a perpetual charge on the federal treasury?

Initially, in defending its give-away of powers to the provinces, the federal government maintained that its own activities in these areas involved waste and duplication. If this is so, then it is mystifying why we would want to compensate provinces for programs that were unnecessary and wasteful in the first place! Why not keep the money and put it towards paying off the national debt?

Perhaps most disturbing of all is the fact that no dollar limits, nor even estimates, have been placed on these new hand-outs. At a time of profound fiscal austerity and cutbacks at all levels of government, our leaders haven't even thought to go to the trouble of putting a price-tag on the Charlottetown Accord. As for any enhancement of economic efficiency through the elimination of inter-provincial trade barriers, the measures in earlier proposals have been completely gutted. First Ministers have merely committed themselves to do more talking on the issue. The fruit of the last seven years of such talks has been little more than the availability of Moosehead beer in Ontario and a government procurement code that each province is supposed to enforce on itself.

A final note on the division of powers — over the next few weeks supporters of the Accord will doubtless claim that devolution to the provinces brings government closer to the people and avoids overlap and duplication.

We have nothing against bringing government closer to the people but do complex intergovernmental agreements, negotiated behind closed doors and without the scrutiny of constitutional amendments, *really* bring government closer to the people? Does using provincial middlemen to spend federal money really bring government closer to the people?

There is doubtless a need for governments to intervene in ways more respectful of individual autonomy and community needs. We see few obstacles to bringing the federal government itself closer to the people. When the federal government works together with business and labour to retrain steel workers to meet the challenges of global competition, or when it provides grants directly to multicultural groups or a women's shelter, *national* government is brought closer to the people. Why have a provincial bureaucracy in between?

IV. Institutional Reforms and Aboriginal Self-government

The latest constitutional package involves significant institutional changes, including a form of Triple-E Senate and the inherent right to self-government for aboriginal peoples.

The new Senate would be elected and equal with six senators elected from each province, two from each territory and some potential aboriginal seats. However, a special provision has now been added to allow Quebec and, in theory, any other province, to appoint its Senators.

The powers of the Senate are complicated. The Charlottetown Accord provides as follows: Bills that involve fundamental tax policy changes directly related to natural resources would be defeated if a majority of senators present cast their votes against the bill. Bills that are not classified as revenue and expenditure bills, legislation materially affecting French language and culture, or fundamental tax policy changes directly related to natural resources, would be considered ordinary legislation. Ordinary legislation cannot be vetoed by the Senate. The Senate could however by majority vote send this legislation to a joint sitting of both Houses, where it would have to be repassed by an overall majority of both Senators and MPs.

With respect to the general structure of the Senate, we have two concerns. The first is that its powers are being presented in the West as very substantial, but in Quebec as largely symbolic.

On balance, it is quite likely that the Senate will play an important role in the public life of the nation, at least in the short term. This comes from the very fact that Senators will be elected in most cases. Moreover, their individual moral authority will be greatly enhanced by the absence of strict party discipline. (Since Senators are not eligible to sit in cabinet, there will be much less incentive to toe the party line than there is for MPs.)

If indeed these expectations prove to be true then we have reason to be seriously concerned about Quebec's role in the Senate. We would prefer an equitable Senate based on equal regional distribution with Quebec constituting one of four or five regions. However, in this proposal, Quebec's role will be limited to six Senators who are appointed, rather than elected, and thus have less democratic legitimacy than others in the upper chamber. The result will be the eventual isolation and marginalization of Quebecers from the Senate as a democratic institution. This in turn will fuel more demands for special powers to be exercised in Quebec City, and offer new windows of opportunity for separatists to claim that Quebecers are merely on the sidelines in Ottawa. As for the guarantee of 25% in the House of Commons regardless of Quebec's population, we doubt that a few extra backbenchers will do much to compensate for Quebec's isolation in the Senate. We are sure that this sort of guarantee will lead to a further sense of alienation and injustice elsewhere in Canada — especially in the West, where Senate Reform had been anticipated as a solution to their present sense of alienation.

We wonder also if, once Senators come to represent interests that are not purely provincial (such as gender concerns or those of disadvantaged Canadians), provinces will not be tempted eventually to withdraw from the commitment to election, and — like Quebec — exercise the appointment option. In that case, the net long-term

effect of Senate Reform will be to transfer patronage powers from Ottawa to provincial capitals.

These concerns about the political consequences of the Senate proposed in the Charlottetown Accord are serious but, equally troubling, is the double majority veto with respect to matters materially affecting French language and culture.

Assuming that the majority of French speaking senators were in fact from Quebec, the proposal would give the Quebec government an indirect veto over every change to federal law touching on French language and culture — from national museums to international cultural relations to multicultural programs and official bilingualism.

If it could appoint enough senators, a future separatist Quebec government would be able eventually to strangle linguistic and cultural policy in Canada — including even the CBC. Finally, the Parti Québécois would have a constitutional means of dismantling bilingualism in Canada. (Although some aspects of bilingualism are protected in the constitution itself, many others depend upon federal legislative initiative.)

At least as troubling is that federal cultural and linguistic policies affecting francophones would require the approval of a majority of the entire Senate. This would mean that lack of support from senators whose provinces have a weak record on francophone rights could defeat federal policies aimed at protecting the francophone minority in Canada.

Another difficult issue raised by the double majority veto is the definition of a French speaking Senator. In the first instance, senators are invited to declare themselves as "French speaking." Here, there would be a natural self-interest in making such a declaration since it would automatically result in more power for

the Senator in question. On the other hand, the Speaker of the Senate will have the final say on the authenticity of such declarations without the possibility of appeal to the courts. This would give a single politician the absolute authority to make final judgements about ethnic purity and individual identity. This is fundamentally repulsive to the principles of a free and democratic society. Furthermore, the Charlottetown Accord is silent on what criteria the Speaker might use to determine who is a *real* Francophone.

Finally, it is unacceptable that the Senate Speaker should have the final word on whether legislation will be subject to the linguistic double majority vote. These votes affect the fundamental balance of power between the Senate and the House of Commons, not to mention in the entire federation and it is contrary to the rule of law that the Speaker should be the final arbiter with no possibility of review by the courts.

With respect to aboriginal self-government, we support its entrenchment in the constitution within the framework of individual rights and representative democracy. Because of artificial deadlines imposed by the federal and Quebec governments, we have failed to achieve an aboriginal package that is truly inclusive or defined sufficiently to minimize contentious and costly constitutional disputes in the future.

While the Charlottetown Accord states that the Charter is "to apply immediately to governments of Aboriginal peoples," it then goes on to give the legislative bodies of aboriginal peoples access to the notwithstanding clause without specifying if or how those bodies are to be democratically elected. Equally important, a strengthened non-derogation clause would allow Aboriginal governments to escape Charter obligations altogether when the "exercise or protection of their languages, culture or traditions" is implicated.

Many aboriginal women are genuinely frightened by the absence of adequate commitments to entrenched rights, including gender rights, in the aboriginal package. As mentioned earlier, the Federal Court of Appeal has ruled that some aboriginal women's groups were illegally and unconstitutionally excluded from the negotiations that led to the Charlottetown Accord. There is thus an element of Greek tragedy in the aboriginal package — the injustice that white Canadians committed with respect to First Nations is supposed to be rectified, but through an agreement itself based on an injustice — indeed an illegality — perpetrated on aboriginal women.

We cannot presume to speak adequately for aboriginal women, but we can listen when they speak for themselves. We therefore close with an excerpt from a native women's brief, quoted in Judge Mahoney's Federal Appeal Court decision:

Aboriginal women are at a crisis point. The Government of Canada is funding advocacy for a point of view that will, if successful, see the removal from Aboriginal women of their rights under the Charter of Rights and Freedoms. ... As an Aboriginal woman, I face the prospect that the price I will pay for Aboriginal self-government will be the loss of my existing equality rights. ... Why are we so worried as women? We have never discussed self-governments in our communities. There is much to be learned. We are living in chaos in our communities. We have a disproportionately high rate of child sexual abuse and incest. We have wife battering, gang rapes, drug and alcohol abuse and every kind of perversion imaginable has been imported in our daily lives. The development of programs, services and policies for handling domestic violence has been placed in the hands of men. Has it resulted in a woman or child safe in their own home in an Aboriginal community? The statistics show this is not the case ...

Conclusion: Towards a Canada for all Canadians

Between now and October 26, Canadians will be told repeatedly by their leaders that the choice they face is to vote for the Charlottetown Accord or accept the break-up of Canada — that, with the constitution, it's the Mulroney way or the abyss.

There is absolutely no reason to think that this Accord will bring constitutional peace. What does history suggest about pacts and armistices made under threats and intimidation? They lack all moral authority and soon dissolve into chaos and conflict.

Former Manitoba premier Howard Pawley recently remarked, "I do not think this satisfies the Quebec issue ... I think it may put off that confrontation for a while longer. But I think it's still going to be around and it will intensify" (*Globe and Mail*, September 1, 1992, page A10).

An editorial writer for Montreal's *La Presse* made a related point just a few days later: "Deprived of the required democratic scrutiny, this reform that is presented prematurely to the people has no guarantee of lasting ..." (*La Presse*, September 5, 1992, page B2)

If threats and ultimatums work to drive through the Charlottetown Accord, why won't they be used again in the future? Why would they not be used in the more than two-dozen brass-tacks negotiations on powers and money that the Accord itself requires? Surrendering to blackmail once is the best guarantee that it will be repeated.

On October 26, Canadians can stop the blackmail dead in its tracks. When they enter the voting booth, the insipid unity jingles will not be playing and there will be no federal politician ready to claim they are enemies of Canada. This is the final democratic privilege that cannot be withdrawn — the secret ballot in which each Canadian is accountable only to his or her own conscience.

We must stop putting knives to each other's throats. We must stop discussing these basic questions through threats and artificial ultimatums. Only a "no" on October 26 will put a halt to this disastrous cycle.

Eventually, of course, we must address the *real* issues — through a dialogue based on respect and honesty, not deadlines and intimidation. Only then will we be able to make a new constitution that allows us to respect ourselves and to pass on to our children the national dream intact — the dream of a Canada for *all* Canadians.

Deborah Coyne and Robert Howse,
September 1992

Editor's note: We would have liked to include the final legal text of the agreement. However, there is no such agreement available — Only a loose consensus report to be amended later. We believe that in time, the credibility of this vote will suffer due to attacks made against it on points of process. It may well be safer for the undecided to vote "no" and be able to reconsider the issues than risk ratifying a potentially damaging and irreversible arrangement.
Sean Fordyce, Voyageur Publishing.

Canada For All Canadians

Statement of Principles

Canada For All Canadians is a non-partisan group with profound concerns about the implications of the Charlottetown Accord. We believe that the changes proposed in the Accord would fundamentally weaken and irrevocably alter the nature of Canada and, in particular: gravely impair the capacity of the federal government to act on behalf of all Canadians; undermine the Charter of Rights and Freedoms; and potentially imperil our survival as a unified, bilingual and multicultural nation based upon equal respect and concern for all.

The constitution belongs to all the people of Canada and must not be altered without their prior understanding and express approval of all the implications. Our group intends to facilitate open and serious debate on the substance of the Accord. We consider it unacceptable that Canadians should have to make a choice without the opportunity to make a reasoned judgement based on legal texts. Given the referendum deadline, we have no option but to begin the debate on the basis of a highly incomplete document.

We hope to convince Canadians that the Accord, if adopted, will perpetuate and intensify conflict and lead to endless new disputes about basic constitutional principles and values. In our understanding, a "no" vote will be a clear signal that Canadians want a constitutional moratorium, at least until these matters can be discussed thoroughly and calmly, without the pressure of threats and artificial deadlines. Above all, our leaders must urgently address our real concerns about jobs, social programs and the environment.

The rejection of the Charlottetown Accord will not mean a failure of Canadian will. It will only mean that the leaders we have at this particular historical juncture have been unable to create a constitutional consensus. It will not be the first time in Canadian history that such a round of negotiations did not succeed. The Charlottetown Accord is immensely complex, involving dozens of frequently interrelated constitutional changes. It would hardly be surprising if such a massive (and rushed) overhaul of our basic law and institutions gave most Canadians a few second thoughts.

Some of the specific reasons why *Canada For All Canadians* believes we should reject the Accord are as follows:

1. Because of the proposed restrictions on the federal spending power, the Accord threatens the feasibility of any new national social programs to address the needs of the most vulnerable and disadvantaged among us. A non-enforceable social charter is hardly a substitute for real legislative capacity to set national standards.
2. Individual and minority rights would be undermined by placing the distinct society provisions in the Canada clause. The Canada clause is not just a symbolic statement of principles but an interpretative provision that is binding on the courts in every constitutional case. In the Accord, Quebec's distinct society is defined largely in terms of the francophone majority and its "unique culture," which would make Quebecers from other cultures outsiders in their own province.
3. The Canada clause, more generally, would create a hierarchy of group rights that threatens to undermine equality and would greatly intensify inter-group conflict in Canada. Some groups would be entitled to the "preservation and promotion" of their identity; others would get a weaker commitment of government support; still

others are merely mentioned without governments having any obligation to advance their concerns (e.g. gender equality). Some vulnerable groups have been left out entirely (e.g. persons with disabilities).

4. The Accord's mechanism to give constitutional status to federal-provincial agreements for five-year periods would lead to a patchwork quilt of legislative powers among provinces, weakening our social and economic union and confusing lines of accountability for government action. Each time these agreements come up for renewal we may have another constitutional crisis on our hands, as the provinces and the federal government fight over powers and cash.

5. In many cases, the Charlottetown Accord, if accepted, would force the federal government to play cashier, handing over money to the provinces without effective control over how it is used. The taxpayers of Canada could be forced to fund provincial programs in perpetuity, despite changing spending priorities, requirements and limitations at the federal level.

6. The economic union would be weakened by provisions that exclude the federal government from a meaningful role in retraining workers for global competition. In addition, the federal government's role with respect to Unemployment Insurance would be narrowed to an income support function, preventing it from using that program to meet the special needs of persons with disabilities, single mothers re-entering the workforce and others who need more than income support.

7. The designation of "culture within the province" as an area of exclusive provincial jurisdiction would lead to endless constitutional disputes about the meaning of this very contentious concept. Until the Supreme Court has its say, hundreds of federal and provincial

policies and initiatives would have to be contested in law suits. A coherent national cultural policy would become impossible.

8. It is unacceptable that a handful of French speaking senators, most of whom may be appointed by the Quebec government, could veto what is left of "French culture" at the national level, as well as any change to bilingualism legislation. It is equally unacceptable that a simple majority of predominantly anglophone Senators would have an absolute veto over federal laws to protect the francophone minority in Canada.

9. The appointment of Supreme Court of Canada justices from provincial lists would simply transfer a closed-door appointment procedure from Ottawa to provincial capitals. A valuable opportunity to negotiate a more open and democratically legitimate appointment mechanism would have been lost.

10. Since the proposed changes to the amending formula would increase the number of matters that require unanimity, every province would have an even greater capacity to veto further constitutional changes. Hence, however damaging the provisions of the Charlottetown Accord may be, it would be virtually impossible to correct the problems later.

About Canada For All Canadians

Canada For All Canadians is registered as a "No Committee" under the Federal Referendum Law, and where necessary, under provincial laws.

The address is: Canada For All Canadians, 1654 Aspen Village Circle, Orleans, Ontario K1C 6T3

Contacts: Deborah Coyne (613) 834-7715 Orleans, Ontario
Michael Behiels (613) 837-9483 Orleans, Ontario
Robert Howse (416) 323-9491 Toronto, Ontario

About the Authors

Deborah Coyne has taught law and public policy at the University of Toronto. She was a co-founder of the Canadian Coalition on the constitution, a coalition of groups and individuals opposed to the Meech Lake Accord, and was Premier Clyde Wells's constitutional adviser from 1989-1991.

Robert Howse is an Assistant Professor of Law, University of Toronto Faculty of Law, and Assistant Director, International Business and Trade Law Program.

Other books by Deborah Coyne and Robert Howse

Roll of the Dice, Working with Clyde Wells during the Meech Lake Negotiations. by Deborah Coyne (James Lorimer & Company Ltd.)

Roll of the Dice describes the brinkmanship that turned the constitutional issue into a crisis; the major players and the spin doctors who worked overtime creating rumours; and the backroom dealing that came close to breaking down the resistance of a strong and principled opponent. A no-holds-barred account of Meech from someone on the inside. Coyne expresses the reservations she shares with most Canadians about the closed-door approach to writing the Canadian constitution. The lessons from Meech Lake on the need for an open and accountable process for deciding the future of the country will last long after the details of the deal itself have been forgotten.

Economic Union, Social Justice and Constitutional Reform: Towards a high but level playing field by Robert Howse (York University Centre for Public Law and Public Policy)

In this study, Professor Howse provides arguments for strengthening the Canadian economic union in order to increase equality of opportunity for individuals and to reinforce a sense of common Canadian citizenship. He advocates a series of constitutional provisions on economic mobility that strike a balance between positive and negative economic liberty. Howse's study includes analysis and discussion of the following: regulatory harmonization as a compliment to negative constraints on the policies of government; the role of an elected and regionally-representative Senate in balancing closer economic integration with concerns of provincial autonomy; the important federal role in social and adjustment policies; and the concept of a social charter.

About Voyageur Publishing

Voyageur Publishing is committed to publishing books on important national issues and making them easily available to Canadians. Our books cost much less than most other books so that all Canadians can afford to share these ideas. Voyageur Publishing receives no financial assistance in the form of grants, loans or subsidies and is entirely self-supporting. For information or if you have a manuscript you would like to discuss, please write or call us. We thank you for supporting another of our projects.

Also from Voyageur Publishing

Opting In: Improving the 1992 federal constitutional proposals. \$8.95
and

Still Thinking: A guide to the 1992 referendum \$1.99
by Bryan Schwartz

Quebec separatism, provincial powers, Native self-government, the economic union and the need for a Canadian social charter are among the important issues examined. Above all, Schwartz concentrates on establishing a process where durable constitutional renewal can become possible. He claims "The federal government may be trying to do to the entire country what it likes to do with premiers: lock 'em in a room and tell 'em nobody leaves until they give up."

Schwartz acted as provincial adviser during what he calls the "Stockholm Syndrome Accord" debates and provided an insider's constructive criticism of the Meech Lake debacle. Currently a professor of Law at the University of Manitoba, Schwartz has his doctoral degree from Yale Law School and is the author of four other books. He is known to a wider Canadian audience through the many interviews he has provided for newspapers, radio and television. He is a regular columnist for the *Globe and Mail*.