

MEETING OF THE CONTINUING COMMITTEE
OF MINISTERS ON THE CONSTITUTION

PATRIATION AND THE AMENDING FORMULA

Quebec Position

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A number of recent public statements by spokespersons of the federal government, including the Prime Minister of Canada himself, have overdramatized the question of patriating the constitution, to the point where many citizens are beginning to wonder whether patriation is not being made into the preliminary step in any renewal of the existing political arrangement, or its essential precondition. If this is indeed what is being said, then Quebec is of the opinion that it is a wrong approach and that there is a risk of the constitutional review now underway reaching an impasse.

The Quebec perspective

The idea of finally breaking with a tie linking Canada to its colonial past certainly has symbolic value for Quebeckers. If Quebec has up until now expressed serious reservations on the subject of patriation, it is certainly not from a desire to maintain a state of colonial subordination. Quebeckers have always insisted -- much more strongly than English Canadians -- that Canada should have its own flag and its own national anthem. It would be preposterous for them to now insist that the constitution should remain an Act of the British Parliament. Quebec's reservations on patriation stem from quite different motives.

To begin with, it is worth pointing out two logical inconsistencies in any approach which holds that the immediate patriation of the constitution is a priority in the renewal of the existing political arrangement. First, we are told that patriation would do away with the last link with Canada's colonial past, but if this is the case, then why is so much care being taken to preserve the queen of the United Kingdom as the queen of Canada? Second, the

current round of negotiations is in theory intended to result in a new Canadian constitution; if this is so, then why is it thought that one of the very first steps to take must be that of formally making the old constitution official?

If the aim really is to work out a new constitution free of colonial ties, it does not appear to Quebec to be particularly appropriate to begin by making a priority of patriating an ancient document which everyone agrees is politically and institutionally outdated: if it were not, there would be no point to the current negotiations.

Serious misgivings

But Quebec's more serious reasons for misgivings pertain to the circumstances and conditions of any premature patriation of the constitution.

1. For Quebecers, a constitution is a sort of contract containing a number of clauses. Before passing judgment on the contract as a whole, they want at least to know the main clauses and they want negotiations concerning these clauses. The 1867 constitution and its subsequent amendments include several important clauses the terms of which Quebec wants to renegotiate. Some of the clauses in question fall under the twelve points on the current agenda; many more will not be considered during the present round of negotiations but will have to be considered later. Patriating the constitution now or in the immediate future amounts to asking Quebecers to accept as a valid basis of discussion the very document which they have been wanting for years to replace with a new, more modern one. Such an approach

takes for granted that Quebeckers will be satisfied with minor alterations to federalism as it now exists, when what most of them want is a new federalism.

2. Next it must be said that the importance Ottawa is giving to patriation, and the way federal spokespersons have sought to give it symbolic value, are making Quebeckers uneasy about the future of constitutional negotiations. The emphasis Ottawa is putting on "Operation Patriation" has led an important section of English-Canadian opinion to believe that patriation is, in itself, a major change in the existing political arrangement. With all the ballyhoo going around about patriation, it could, once accomplished, provide an excuse to slow down the pace of further negotiations, because a large sector of the population of Canada will believe that the country's political problem has largely been resolved. Quebec is therefore of the opinion that since patriation could put a brake on the changes of substance it has always wanted to see, patriation should take place after these changes of substance have been made.

3. Many of the governments hold the view that patriation cannot be carried out unless accompanied by an amending formula. Otherwise, they say, constitutional amendment would be extremely difficult because the current rule of unanimity would continue to apply. One can therefore expect that patriation will not happen without an amending formula. However Quebec is of the opinion that before either patriation occurs or an amending formula is brought in, an overall agreement should be reached that could satisfy Quebec, even if it were not complete. The present round of negotiations, and a further round that could take place later, constitute an excellent opportunity to arrive at such a "package deal" taking in at one and the same time many of Quebeckers'

traditional aspirations and demands. Patriation and adoption of an amending formula in the near future would mean that those of Quebec's demands not on the current list of twelve items would be considered under the amending formula and would thus be dealt with one at a time. Once the continuation of constitutional negotiations became subject to an amending formula, they would lose the sense of urgency they now have and would be a matter of only occasional concern. Quebec could not hope for changes except when such changes were of equal concern to Ottawa and the rest of Canada. Once a measure of constitutional "inertia" develops outside Quebec, Quebec's hopes could well be frustrated, for it might be the only party calling for amendments while the others remain indifferent.

4. If the patriation and amending formula processes are carried out too hastily, without sufficient reflection on basic principles, there might not be time to work out -- without danger of misunderstanding -- all aspects of the sort of political arrangement that is suitable for Canada, Quebec and the other provinces.
5. In light of the above, Quebec feels it to be more evident than ever that any unilateral action by Ottawa regarding patriation should be ruled out. Such action would itself change the nature of federalism and the form of relations between Ottawa and the provinces, with the latter becoming entities considered inferior by the central government.