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Federal-Provincial  
Relations Office

Bureau des relations  
fédérales-provinciales

June 5, 1980

Mr. Pitfield  
Mr. Rabinovitch  
Mr. Ablett  
Mr. Gwyn  
Mr. Cameron ←

Mr. Kirby made the following notations on the attached paper "Uses of a National Referendum".

Page 1, last paragraph

- overstated
- it was a non-issue in most parts of Canada

Page 2, 1st paragraph

I do not believe that this "frustration" exists.

Page 2, 4th paragraph

Agree.

Page 2, 6th paragraph

This is at least debatable.

Page 2, 7th paragraph

Agree.

... 2



Page 3, Point # 5.

re: if a majority support a referendum question, and 95% in Quebec vote against it, it carries? So regional variation does not matter. Wow!

Page 3, Point # 7.

Does this mean that referenda would only be held on certain types of constitutional change? If so, why?

Page 4, 2nd paragraph

Why would you do this? It would be a colossal waste of time, effort, etc. because everyone would be on the same side?

Page 4, 3rd paragraph

Do we allow provincial-only referenda? (i.e. suppose all the provinces - or all but Ontario - agree to wording on the resource power, but wording with which the feds disagree, then is a referendum allowed or not?)

Page 4, Point # 1.

Agree .

Page 5, 1st paragraph

- very hard to do if most of the Premiers are strongly opposed.

... 3



Page 5, 2nd paragraph

Agree.

Page 6, 1st paragraph

How is "region" defined?

Page 6, 2nd paragraph

Not at all clear that it would cool as quickly if "the West" lost and "central Canada" won.

Page 7, 1st paragraph

See note on page 4.

Page 7, 6th paragraph

Agree.

Page 8, 3rd paragraph

Agree strongly.

Page 8, 5th paragraph

But this is probably the only case in which we would have a referendum.

Page 9, 1st paragraph

Agree.



Page 9, 6th paragraph

"as quickly as possible" - if we try to prove this in less than 3 months, we will be accused of extraordinary bad faith in our negotiations. Indeed we will be accused of deliberately sabotaging them. This would make winning a referendum very difficult.

Page 9, 6th paragraph

There is an implicit assumption here: that we are going to move into a referendum phase. As I understand it, this is a highly debatable assumption.

Conclusion

Your paper adds to my conviction that a national referendum is probably not the way to go after we reach an impasse. We should instead move unilaterally directly to Westminster.

Betty Yolkouskie

SECRET

June 3, 1980

Uses of a National Referendum

Purpose

This paper sets out a rationale for the use of a national referendum as a positive, unifying instrument for change and for affirming the nation as a shared endeavor.

Background

The Quebec Referendum had a number of well-noted negative and divisive effects, both within Quebec society and throughout the country. However, the referendum process also had a number of important positive effects. Among them are the following:

1. The long process leading through the White Paper, the Assembly Debate and the vote itself created something that is the essence of nationhood, a sense of shared experience;
2. the process created within Quebec a sense that on matters of fundamental importance to the people, the people would decide. That is, a measure of political sovereignty rests with the people;
3. the process created a powerful sense of individual equality, that is, the vote of one person was equal to that of every other, rich or poor, urban or rural, francophone or anglophone or ethnic.

In terms of the nation as a whole, the most important negative effect may be that the experience shared by Quebecers was not shared by other Canadians. It would overstate to say that there was resentment outside Quebec but certainly there was a measure of frustration that a vital decision affecting all Canadians was being made, that non-Quebecers would bear the burden or benefit of the results but could not affect the result or, in large degree, even make their views known.

*Overstated  
- it was a  
new issue  
in most parts  
of Canada.*

Discussion

*I do not believe  
that this  
"our turn" surge  
exists.*

It is the thesis of this paper that this frustration among non-Quebecers can become an important negative influence on the country's future.

*but by no  
means imply that*

To a degree the threat of the Quebec referendum imposed a discipline on the other provincial governments of the country. That constraint has been removed. Provincial governments have moved quickly to assert their interests. There is every evidence of a powerful "our turn" surge among the provinces.

Lacking any other outlet to positively involve themselves, the publics of the various provinces are confined to choosing between provincial and federal government positions.

*new?  
the public  
is personal?  
agree*

Yet there are increasing signs that the public wishes to be directly involved in the process itself. Direct demands to be represented at the table have come from representatives of native peoples and the territories. But other groups are also seeking a place. More important, the rationale for greater public involvement is being elaborated, strengthened and popularized.

*no  
implication*

This may flow partly from frustration that nearly two decades of work have produced no results through the traditional government-to-government channels. But undoubtedly a more sophisticated public (as a result of constitutional matters being so highly visible for an entire generation) is more aware of the broader importance of the constitution. That is, constitutions are more than a matter of deciding how governments will deal with each other. They vitally affect the way people deal not only with governments but with each other.

*This is at  
all debatable*

In brief, there is a momentum for change in which the public is involved directly, as Quebecers were directly involved in the Quebec referendum.

*agree*

A national referendum is the only instrument that can involve the public in a practical, manageable way in constitution-making. The key questions regarding its use relate to its possible purposes, how the undoubted risks can be minimized and timing.

*commitment  
assent by  
electoral process?*

The real purpose is not mentioned - to break  
out of a perceived provincial stranglehold.

Purposes of a Referendum

The purposes to which the national government direct a referendum might include the following:

1. To positively affirm the idea of Canada;
  2. to allow Canadians to share a common experience of nationhood;
  3. to establish that on matters fundamental to the Canadian people as a whole, the people are sovereign;
  4. to transfer to the people certain instruments by which they might use directly and in a continuing way the sovereignty they possess and which could not be removed or altered except by a decision of the people;
  5. to affirm, by the use of the referendum, the equality of each Canadian and his vote;
  6. to establish the popular will as a legitimate means of constitutional amendment in matters involving the interest of the people as a whole;
  7. to transform the basis on which the national government would bargain in future with the provinces by removing certain matters (eg. the principles of the nation, fundamental rights and freedoms, patriation, etc.) from the realm of executive-federalist decision and placing them with the people;
- or, alternatively, to affirm by popular vote that the results of government-to-government negotiation represent the nation in all its dimensions.

2. if a majority  
of 95% in a referendum  
is required, does  
this mean that  
the regional  
vote does  
not matter?  
Wow!

Does this mean  
that referenda  
would only be  
held on certain  
types of constitutional  
changes?  
Why?

Certain of these purposes are implicit as soon as the government chooses to use the referendum as an instrument in the constitutional processes. For example, the use of the referendum implies a degree of popular sovereignty in constitutional affairs, implies the equal weight of each Canadian's vote and involves a shared experience.

A performative Expo 67  
style statement

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not necessarily  
inconsistent building  
provision  
would appear  
why would  
you do this? It would  
be a colossal waste  
of time, effort  
etc  
because  
everyone would  
be on the same  
side?

Others turn on the question that is posed, for example, the transfer to the people of certain instruments of popular sovereignty, the transformation of the future basis for bargaining with the provinces, etc.

Minimizing the Risks of a Referendum

There would seem to be little risk attached to using a referendum to affirm an agreement reached by First Ministers and accepted by the 11 governments.

The primary risks relate to a federal-only referendum. The great concern is that a federal-only referendum would represent a challenge to certain governments and, combined with a strong provincial government campaign against the question and a lack of federalist organization (eg. in Alberta), would be more divisive than unifying.

we allow  
referenda - only  
to express all  
provinces  
to all but Ontario  
to be assured  
& working with  
deal the fed  
to agree that is a  
referendum allowed  
for not?

As a general comment on that risk, it does of course exist. But if the government believes that in certain regions there is such a lack of national sentiment that a referendum affirming Canada as an idea and/or transferring certain rights allowing people to deal with the federal government only in a guaranteed way, then it has little choice but to meet the demands of the governments of those regions at almost any cost and quickly. That is, if the idea of Canada as a nation having national institutions and citizens sharing common principles, rights and freedoms is divisive with the public then the country is in mortal peril.

more  
important  
than this

In more specific terms, however, the risks of such a result can be higher or lower depending on a number of factors, including:

1. The Credibility of the Referendum Process

As a general proposition, the referendum as a means of popular expression of will has been given credibility by the Quebec referendum as well as by American influences (Proposition 13). If it is seen as a "trick" to avoid the "legitimate" demands of Premiers, however, its credibility would be damaged.

agree

If there were a clear division in Parliament both as to the use of the referendum and the question it contained - that is, if it had solely government support - it would be vulnerable to attack. Two possibilities exist for minimizing this risk. One is to bring one of the Opposition parties on side. The other is to use a free parliamentary vote to both invite the kind of amendment likely to render the question more acceptable on a regional basis and cast the question as a parliamentary decision rather than a government decision even if the bulk of support would be from the government side.

*+ press*  
*very hard to do if the Opposition are strongly opposed*

2. The Credibility of the Players

*agree*

In view of the uncertainty as to the Prime Minister's personal timing, his credibility is very much a factor of concern. Generally, it would appear that the sooner a referendum were held the better.

*/?*

The credibility of opponents would also be an important concern, but this turns very much on the question that is involved. If the question contained an overt challenge that will be implicit whatever the question - then certain Premiers may be able to recast it so that it is seen not as a transfer to the people of sovereignty and but as a denial of the people's aspirations as expressed by a provincial government.

*or not longer*

3. The Capacity of the Question to Generate Support

The elements of the question must have or be capable of developing a constituency to maximize the chance of winning and minimize the chance of regional defeat. This is particularly true if, among other principles of Canada, the principle of "sharing" is put to a referendum. "Sharing" can be cast as a code-word for "grabbing our resources" in the resource-rich regions, particularly if the referendum occurs during or soon after the resolution of conflicts on energy.

Finally, it would seem important to have a perspective on the consequences of a loss in a particular region, in the context of a national victory.

*how is "region" defined?*

*at all clear that could cost Quebec the West lost and central Canada was*

In the short-term, such a loss may aggravate regional sentiment. However, the situation in Quebec has cooled remarkably quickly, despite the concern that a no victory would lead to a violent reaction from the yes forces.

But as well, it is difficult to see that the people in a particular region would not use and live by the results of a national referendum, regardless of the arguments used or the passion developed against that result. Even the opponents of entrenchment of a right will use that right if the need arises.

The Timing of a Referendum

At present, the government does not have legislation that would allow it to conduct a referendum, whether to provide a popular basis for a federal/provincial agreement or as a positive instrument for federal-only change.

It would take, by present estimates, a minimum of six months from the time of introduction to the day of a referendum vote. This assumes minimum parliamentary blockage. As a practical matter it could take considerably longer, particularly in circumstances involving unilateral change.

Thus, a number of timing scenarios are possible:

1. The Consecutive Scenario

This would involve trying to negotiate under deadline a comprehensive package with the Premiers, then introducing a referendum Bill in the House. The utility of this approach turns in part on the deadline date.

See note on  
page 4

- September 9 deadline: If the First Ministers had agreed to a package, passage of a referendum Bill through the House would likely be smooth and a referendum could be held in the Spring of 1981.

If First Ministers failed to agree, however, it is difficult to see quick movement on such a Bill in the House because it would be log-jammed with energy legislation through the Fall and Winter. It is possible a referendum vote could be held by the Summer of 1981 but it is possible it could be forced to the Spring of 1982.

- December 9 deadline: Again, agreement would smooth House passage of a referendum Bill and a vote might be possible around the end of June 1981.

If there was no agreement, the three months delay before introducing the referendum Bill, added to blockage in the House and a mood soured by the energy issue, could force a referendum vote to the Spring of 1982 or later.

At that time, the maintenance of the credibility of the Prime Minister would be of primary concern in terms of the referendum campaign. As well, the Premiers, the arguments well honed, could campaign against the referendum from the time the talks failed - as the federal government did in Quebec from November 1976 onward.

~~agree~~

Our judgment would be that the consecutive scenario could be done but it would be tight regardless of the deadline and, in terms of the timing of an ultimate referendum vote, it is clearly preferable that there be a September 9 deadline.

*on the other hand  
it might be certain  
circumstances serve  
as a good encouragement  
agreement.*

2. The Concurrent Scenario

This would involve parallel efforts to both negotiate a comprehensive package with the Premiers by December 9 while a referendum Bill was being debated in the House.

This could move the date of a possible vote into late Spring or early Summer of 1981 when the Prime Minister's leverage on the electorate would still be high.

The effect of the Bill's introduction on the negotiation itself and on the legitimacy of the referendum itself would present major problems, however.

*agree  
strongly*

Regardless of how the Bill was cast - as a means to involve the public in approving the First Ministers' work would be an obvious way - it would almost certainly be seen by certain Premiers as a constitutional "guillotine". If there was a chance to achieve agreement, the very fact of the Bill's introduction could serve to reduce or destroy that chance. Most important, it would open the government to charges of "bad faith" negotiating.

Similarly, the effect of First Ministers' negotiations on the Bill's passage would present problems. Most likely, the government would find itself pressed to exclude the use of the referendum in the absence of federal/provincial agreement. A refusal to do so would reinforce the "bad faith" argument.

*is this a particularly  
to only case in  
which we would  
have a referendum*

In this regard, the consecutive scenario may present exactly the same problems as the concurrent one. That is, before presenting a Bill, the government could be pressed to exclude unilateral use of the referendum, would have to refuse if it wished to preserve its option of going to the people and this would reinforce as well the "bad faith" argument. The Opposition Leader has already raised publicly the possibility that the government intends to go to the people with a referendum.

Given this situation, the amount of time the government is prepared to commit to trying for a comprehensive settlement or demonstrating its impossibility becomes a critical element. The longer the time taken, the less the chance of staging a referendum when the Prime Minister's credibility with the electorate is at its peak. As well, the longer the time taken, the greater the opportunity of the Opposition and the Premiers to undermine that credibility, to establish the "bad faith" argument and undermine the legitimacy of the referendum.

Conclusion

Our assessment at this point is that the chance of a comprehensive settlement with the Premiers, particularly in light of the fact that energy is already established as a key area of both federal/provincial and interprovincial conflict, is low and falling.

The chance of achieving such a settlement, either under deadline or during passage of a referendum Bill, is close to nil.

In these circumstances, the primary purpose of any First Ministers' meeting and/or conference is to demonstrate that agreement cannot be reached.

There is already a developing sense that agreement cannot be reached (Mr. Lévesque has helped to establish that) and there is public discussion of a federal referendum.

In these circumstances, depending on how they assess the effect of a federal referendum on their own positions, the Premiers' main objective will almost certainly be to close off the referendum option or reduce its legitimacy by building opposition to the idea of such a referendum in order to skirt the difficulty they should anticipate in opposing the eventual question in such a referendum.

Our assessment, based on this analysis, is that the primary federal tactical objective at the June 9 meeting is to demonstrate as quickly as possible that the process can't work in order to move to the referendum phase and limit both the time and the opportunity for the Premiers to attack the government for bad faith.

*there is an  
object  
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are: that  
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to move into  
a referendum phase.  
As I understand it, this is  
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ABLETT/cv*

Conclusion  
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my attention that a national  
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*if we try to prove this  
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referendum very difficult.*

*[Handwritten marks: a large bracket on the right side of the page, a question mark, and two question marks in a vertical line on the right margin.]*