

ÉTUDES ET DOCUMENTS

Selected Texts on Québec Democracy

Texts selected and presented by

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Introduction

In his introduction to *Le passé d'une illusion*, French historian François Furet noted how modern democracy was born at the end of the 18th century in North America and Europe based on the same ideas and passions,¹ although both experienced markedly different destinies. The revolution of 1776 was spurred by ideals of liberty and equality but also pursued democratic practices that went back to the origins of the American colonies. It concluded with voting on a constitution in 1787, which combined the invention of federalism and modern representative democracy. The constitution's promise and workings persist even today and have become the sacred ark of American citizenship. Conversely, in Europe it was some time before democracy found a stable base. The French Revolution of 1789 put an end to the ancien régime, although, until the Third Republic, France witnessed a succession of regimes and constitutions, some of which offered the spectacle of egalitarian despotism. Elsewhere in Europe, many monarchies were overthrown without the old regimes being replaced by democracy. The revolutionary ideal culminated with the October 1917 revolution, following which democracy went into a long, painful eclipse in a large part of Europe. In the wake of the euphoria surrounding the collapse of communism in 1989, countries such as the Czech Republic and the Republic of Poland have restored democracy, which was interrupted or halted in the 20th century.

We are all familiar with modern democracy established by the United States, which Alexis de Tocqueville brilliantly described in *Democracy in America*, written after his visit to the US. In the course of his journey, Tocqueville ventured in August 1831 as far as Lower Canada, the former French colony that fell under the control of the English Crown in 1763, which, to his great surprise, revealed another promising North American democracy. Several notebooks, not sweeping portraits, are all that remain of this brief incursion among the "Canadiens." Although his observations were fragmentary, they were sufficient to conclude that parliamentary democracy in Lower Canada, still recent and fragile, was sufficiently robust to flourish. Tocqueville observed that the people of Lower Canada already shared with the American people the typical qualities of a democratic society, although each displayed its own traits.

The texts assembled in this background note will attempt to describe this other "North American democracy." It is perforce modest, as it would take a much more substantial work to pay justice to Québec democracy past and present. It is also modest since it struck me that, before recounting the history of a democracy, it is important to focus on texts and pivotal events. Unfortunately, it was impossible to assemble all of them, so numerous and worthy of inclusion are they. Consequently, this background note is intended to introduce the topic rather than provide a conclusive summary of it, less a definitive inventory than a signpost indicating several paths to readers.

Aside from legislative and political texts pertaining to contemporary Québec, this note also assembles speeches, first-hand accounts and documents that marked the birth of representative democracy in Québec. Without the necessary insight from the past, much contemporary political debate would lose its substance and meaning. It is through such insight that we can discern the struggles that led to democracy and ascertain what remains to be achieved. Antoine de Baecque, in an introduction to the collective work entitled *Une histoire de la démocratie en Europe*, warns us against the illusion of thinking that democracy can do without history, "that it is an obvious idea, a regime that is natural to civilized humankind. As if democracy, a stage in political happiness, had no history. Accustomed as we are to this idea, our perception is distorted. Once again, it is essential to make a detour through history."²

Democracy was born in Québec in 1791, thanks to the American revolution and the ideas disseminated by the Age of Enlightenment in Europe. Its ideal was conceived several years earlier. If Québec democracy is among the oldest and most deeply rooted, the time elapsed since its inception must not lead us to think that it has developed smoothly. It, too, has experienced periods of interruption and haziness, setbacks and daunting uncertainty, but never to the extent that the inhabitants of what was, from 1791 to 1838, Lower Canada, then from 1840 to 1867 Canada East and, after 1867, Québec, relinquished their sovereign right to elect their rulers and express through suffrage their will.

¹ François Furet, *Le passé d'une illusion. Essai sur l'idée communiste au XX^e siècle*. Paris: Éditions Robert Laffont, 1995, 824 pages.

² Antoine de Baecque, "Entrer dans l'histoire" in Antoine de Baecque (director), *Une histoire de la démocratie en Europe*. Paris: Le Monde Éditions, 1991, page 6. [OUR TRANSLATION]

I will make a brief foray into history. Which documents should be chosen? I could have confined myself to colonial statutes voted by Parliament in London, i.e. the legislation of 1791 that created Upper and Lower Canada and granted each territory a house of assembly under a monarchy; the legislation of 1840 that abruptly ended the first regime and replaced it with the union of the two colonies, thus imposing the equal representation of two peoples whose populations were unequal; and the legislation of 1867 that established the Dominion of Canada, a federation comprising four provincial States, including Québec, assembled under a British-style constitutional monarchy. However, British colonial law, written in the dense style inherent in English legal parlance, gives little inkling of debate at the time and the issues at stake. A knowledge of the legislation is of more interest to practitioners or historians of constitutional law. Since these documents are now widely disseminated,³ I thought it preferable to select speeches and first-hand accounts that capture the spirit of the period and that, having occasionally been overlooked in official compilations, warrant broader dissemination in Québec and abroad.

This note comprises three sections. The first section, of a historical nature, covers the period from 1791 to 1960. The second section, focusing on legislation, provides an overview of contemporary Québec statutes. It presents some of the provisions in Québec legislation that guarantee freedoms and civil and social rights and organize the State and the Québec electoral system. Obviously, this is only a selection, encompassing some of the key sections of statutes that are of symbolic or organic importance. In the third section, the reader will be able to examine the reforms and refinements that Québec democracy has undergone in the course of its contemporary history and learn about certain ideas or projects, which, while not all of them have succeeded (assuming that they should have), have nonetheless punctuated political debate throughout this period spanning nearly 40 years. By the contemporary period, I mean the period since what is called in Québec the beginning of the Quiet Revolution, which began when the Liberals under Jean Lesage came to power in 1960. The events that followed underpinned the edification of the political and administrative institutions of the Québec State. One might object that the choice of 1960 as the pivotal year is somewhat arbitrary, since many of the reforms that occurred during the 1960s marked the culmination of debate that had gone on for a good part of the century. This date in no way delineates an intangible demarcation, since, it must be acknowledged, history cannot be sliced up with the knife of reason.

During the contemporary period, I have emphasized, as far as possible, speeches in the National Assembly and parliamentary debate, which have the advantage of reflecting the thinking of the political players of the time and revealing both antagonisms between political parties and the rallying points in respect of which the parties are able, in Québec, to put aside (or almost) their differences at critical, solemn moments. Since the advent of modern communications technologies in the political sphere, representative democracy (and Québec is no exception to this universal trend) has changed. Political debate is no longer confined, as it used to be, to parliament, and is no longer the exclusive affair of the political parties. The media, commonly called the Fourth Estate, brings representative democracy directly to the public, made up, by and large, of informed, fairly educated swing voters, who have access to information through channels other than traditional partisan ones. For this reason, one might be inclined to attach less credence or importance to parliamentary debate, or less than was the case in the past.

Despite this shift in representative democracy toward what French philosopher Bernard Manin has called the democracy of the public,⁴ it is not an exaggeration to say that parliamentary debate in Québec today is still at the heart of political life, even though the democracy of surveys and the media has added to it new centres of discussion. It is through such debate, especially when the National Assembly must give an opinion on draft legislation in the public interest, deliberates on a motion reaffirming its rights and those of Québec voters, or when government ministers, who are accountable to the National Assembly, are questioned on some urgent or crucial matter, that the collective will takes shape and adjusts itself and that legislation, in addition to being sanctioned, takes on its full meaning. Once again, it was necessary to choose among an excessive number of debates and prune those portions that were too technical or restricted to be of interest to the Québec public.

Why, the reader might ask, have I focused my attention on Québec democracy? Considering that Québec is part of a federal regime, its democracy necessarily expresses itself at two levels, first through the federated State of Québec, which in itself constitutes an autonomous political community with its own electoral system and whose political

³ See, for example, the compendium on the constitutional history of Québec published by Jacques-Yvan Morin and José Woehrling, *Les constitutions du Canada et du Québec du régime français à nos jours*, volume 2. Montréal: Éditions Thémis, 1994, 336 pages.

⁴ Bernard Manin, *Principes du gouvernement représentatif*. Paris: Calmann-Lévy, 1995, 319 pages, page 299.

life is animated by provincial political parties, which alternately govern Québec. The second level is that of the federal Canadian State, in which Québec is part of a broader political arena, governed by another series of rules and in which other parties compete. A cursory examination of Québec's political history clearly reveals that the development of democracy there has been inseparable from the desire of Quebecers to form a political community that is free to adopt the representative institutions necessary to ensure their democratic development. As sociologists Gilles Bourque and Jules Duchastel have rightly noted, "representative democracy cannot, in fact, operate in the absence of an identifying reference that represents the community (the people, citizens, the nation) on behalf of which power is exercised within a defined space (the country)."⁵ Québec democracy was born in the colony of Lower Canada under the British Crown and quickly took shape in a political community, in a distinct national body, as Tocqueville noted in speaking of the people of Lower Canada. Following the regrettable interruption of the Act of Union of 1840, which removed its political freedom, this national body achieved a firmer foundation in the federal union of 1867. Through its legislative assembly, which became the National Assembly in 1968, Québec undertook to govern itself within the limits of the Canadian federal and constitutional monarchy.

Obviously, debate is still open on the manner in which Québec democracy fits in with Canadian federal democracy and the status of the former in relation to the latter. For several decades, recognition of Québec as a distinct national community has been at the forefront of talks on constitutional reform in Canada. Innumerable works have examined this question. In order to avoid adding needlessly to this already abundant literature, but also to highlight its course in history and contemporary political reforms, I am presenting Québec democracy here through the texts that have meditated, defended and edified it.

⁵ Gilles Bourque and Jules Duchastel, *L'identité fragmentée. Nation et citoyenneté dans les débats constitutionnels canadiens, 1941-1992*. Montréal: Fides, 1996, 383 pages, page 19. [OUR TRANSLATION]

Documents and Historical Studies

Introduction

An introduction is necessary before we turn to the history of Québec democracy as seen through selected texts. I have assembled here two brief studies that describe the organization and origins of Québec's first democratic institutions, which historians associate with the Constitutional Act, 1791, adopted by the English Parliament. The first document is a study prepared by the Québec Chief Electoral Officer on the election of 1792, the first in Québec's history, which reviews the circumstances surrounding the creation of a House of Assembly in the colony of Lower Canada, one of the two colonies resulting from the division of the "Province of Quebec" established after the English conquest in 1763. The second document, an article by historian Pierre Tousignant published in Forces, examines in greater detail the circumstances surrounding the creation of the first democratic institutions and the influence exercised on them by the political ideas of the time and the American and French revolutions.

It is important to allude briefly to the political regime in New France (1534-1763), abruptly brought to an end by the Seven Years' War and the Treaty of Paris of 1763. Historians have tended to depict colonial institutions in North America under the French monarchy as reflecting an absolute monarchy. The caricature gained a following among a number of historians, especially during the 19th century. More paternalist than absolute, the colonial monarchy of New France, undoubtedly because of the colony's remoteness from Metropolitan France and the freedom allowed by the establishment of a new society in a new territory, experimented with original institutional forms for the time. We now know that New France possessed for several years elective institutions and public assemblies and that criminal law was applied there less stringently than in England. It would be inappropriate to see in it the birth of Québec democracy. For a more detailed description of political institutions and freedoms under the French regime, the reader is encouraged to consult the treatise by Jacques-Yvan Morin and José Woehrling.¹

¹ *Les constitutions du Canada et du Québec du régime français à nos jours*, Volume 1. Montréal: Éditions Thémis, 1994, see pages 1-42.

From one constitution to another (1763-1774-1791)

Background

Quebecers have been able to elect their political representatives for 200 years. The British Parliament adopted the *Constitutional Act* in 1791, through which it granted our ancestors the right to vote and the possibility of choosing their representatives in the Assembly during elections. In the wake of the Conquest, the Royal Proclamation of 1763 had already made provision for a future assembly, but it was only established 28 years later. In the meantime, the American and French revolutions had caused agitation and the British colonial authorities feared their influence in Canada. The American Revolution and the independence of the United States had also led to the arrival in the colony of thousands of Loyalists already familiar with representative institutions. Moreover, the closest British colonies already had elected houses of assembly, i.e. Nova Scotia since 1758, Prince Edward Island since 1773, and New Brunswick since 1784.

Many eminent citizens in the colony had for years been demanding an elected House of Assembly. A number of petitions to this effect were submitted to the British government, first by English merchants established in the colony, then by the leading French-speaking citizens. Society at the time was divided socially and economically, with trade in the hands of the Anglo-Scots established in the colony (who made up the bulk of the English-speaking community), and land ownership in the hands of the seigneurs, mostly French-speaking, which was reflected at the political level by differing opinions on the advisability of establishing a House of Assembly. It would appear that initial opposition from French-speakers to the granting of a House of Assembly was attributable to a fear of seeing the institution levy taxes on agriculture and a fear among the seigneurs that they would lose their privileges if the vote of an habitant had the same value as that of a seigneur. However, having obtained the restoration of civil law through the *Quebec Act* of 1774, the key demand of the French-speaking political class since the Conquest, the leading French-speaking citizens joined with their countrymen of Anglo-Scots origin to demand the establishment of an elected Chamber of Assembly.

In response to these numerous demands and in light of the revolutionary atmosphere disturbing France, London decided to act. The *Constitutional Act* was debated in the House of Commons in London in

the spring of 1791 and was adopted in May of the same year. It came into force on December 26, 1791, an event that gave rise to celebrations in the colony, especially during banquets that assembled the leading citizens. The debate surrounding the *Constitutional Act*, which became famous because it opposed two leading lights of British politics, Burke and Fox, enabled the interveners to present the British Constitution at the time as an ideal political model, characterized by the balance between the institutions representing the monarchy, the aristocracy and the people. This balance was intended to avoid absolutism and the predominance of one of the three institutions. This model served as the basis for the Constitution of 1791, although it was adapted to the colonial context. In concrete terms, the *Constitutional Act* divided the colony into two provinces, Upper Canada and Lower Canada, each with a Legislative Council made up of members appointed by the governor and an elected Assembly. Moreover, the governor, assisted by a lieutenant-governor and an Executive Council, held extensive powers, in particular a right of veto over legislation adopted by the assembly. The situation was far removed from the ideal model envisaged by the British parliamentarians.

The creation of a House of Assembly in a colony whose inhabitants had never participated in an election made it necessary to establish a series of rules. The Constitution of 1791, aside from its explicitly institutional facets, was also the first electoral law. It contains provisions governing the first general elections in our history, held in 1792. The establishment of an elected Assembly gave rise to a series of innovations: the first election campaign, the first division of the territory into ridings, vocabulary, rules and new practices. At the time, our ancestors had to deal with:

- a series of rules that provided a framework for the conduct of the election;
- electoral traditions that were solidly rooted in Great Britain and familiar to a handful of individuals who brought them here; and
- new situations that compelled them to develop a practical sense.

As a result, the inhabitants of Lower Canada had to acquire and develop new knowledge and display imagination and initiative when the circumstances demanded. The *Constitutional Act* did not implement parliamentarism, since the government was not responsible to the Assembly, nor institute democracy as we know it today. However, 1792 can be regarded as

a year of learning and the first steps towards democracy in Lower Canada. [...]

Madeleine Albert *et al.*, "L'élection de 1792" in *La revue électorale, synthèses et documents*. Québec: Québec Chief Electoral Officer, 1992, pages 3-4.

"The Birth of Representative Democracy in Canada"

A new constitutional era

The Constitutional Act which came into effect on the day after Christmas 1791 was hailed by the citizenry of Quebec City as the "new constitution of Canada." Framed in the fall of 1789 by Secretary of State William Wyndham Grenville, cousin of Prime Minister William Pitt the Younger, the draft of the new Canadian constitution was tabled in the British Parliament in the spring of 1791 and received royal assent on June 10. That legislation applied to the colonial territory designated as the "Province of Québec," which was divided into the two separate provinces of Lower Canada and Upper Canada.¹

In laying down "the fundamental conditions for the institution of a parliamentary system,"² the act of 1791 ushered in a new constitutional era that, it was believed, would be characterized by the reign of political freedom. "Impromptu Patriotique," a piece published in *The Quebec Gazette* on New Year's Day 1792, celebrated the coming of Liberty on sure and fleet wing: "La liberté, d'un vol sûr et rapide, étend ses doux rayons jusque dans nos climats. Son feu divin vient fondre nos frimats. De l'Angleterre à l'Amérique, l'humanité étend ses loix. (sic) Un souverain doux, juste et politique, veut nous faire jouir de nos droits, en vertu d'un décret du Sénat britannique."

Those were the sentiments of the painter and sculptor François Baillairgé when he wrote in his diary on January 1: "1792 is the nation's first year of liberty."

Use of the word "liberty" in connection with events that occurred at the same time as the French Revolution may create confusion, making it important to spell out the meaning and scope of the word in the

¹ That territorial division was the origin of the present-day provinces of Québec and Ontario. The dividing line matched the western limits of the seigneurial domain.

² As stated by constitutional expert Henri Brun in his work *La formation des institutions parlementaires québécoises, 1791-1838* in the "Droit et science politique" series, Presse de l'Université Laval, 1970.

colonial context of late-eighteenth-century British North America. Certain historical facts and realities bear remembering in this regard.

A long-awaited coming

When Canada was ceded to Britain under the Treaty of Paris of 1763, the former subjects of the king of France who were known as “Canadiens” became “new British subjects.” Through contact with the Anglo-Scottish colonists who had settled in the St. Lawrence Valley, the most enlightened of them were quick to school themselves in the rights and privileges of British subjects. That education in “English freedoms” was considerably furthered by the 1764 founding of the first “Canadien” bilingual newspaper, *La Gazette de Québec/The Quebec Gazette*. Readers were kept abreast of the first serious crises that fuelled the process of the American Revolution among their neighbours to the South. The large-scale protest movements organized by the Sons of Liberty gave the Canadian press the opportunity to air their demands in favour of constitutional rights and powers for the colonial legislatures.

The American Revolution swept in its wake thirteen of the fifteen British provinces (the exceptions being the two Floridas, where English stewardship was short-lived, 1763-1783) that comprised Britain's colonial empire in North America on the eve of the Declaration of Independence of July 4, 1776. Only the provinces of Nova Scotia and Québec remained loyal to the Imperial Crown and thus provided refuge for thousands of “American” Loyalists who had refused to follow the example of their revolutionary compatriots.

Before invading Canada in the fall of 1775, the Sons of Liberty had sought to rally the French-Canadians to their resistance against the repressive measures of the metropolitan government. During their first Continental Congress held in Philadelphia in the fall of 1774, the delegates of twelve colonies (Georgia was not represented) had agreed to task an ad hoc committee with writing a “Letter to the Inhabitants of the Province of Québec.”³ Translated into French and printed in two thousand copies, that circular addressed to French-Canadians as “Friends and Fellow Citizens” set out the constitutional rights of which they had been unjustly deprived since becoming British subjects. “The first and foremost right,” it read, “is that the people shall share in their govern-

ance through self-chosen representatives, and shall thus be governed by laws of their approval, not by decrees issued by those over whom they have no power.” But far from extending that political freedom to French-Canadians, the ministry had imposed an “arbitrary, despotic, tyrannical” form of colonial government in the shrouded disguise of the Quebec Act of 1774. To awaken French-Canadians to their sad plight, the letter evoked the memory of the “immortal Montesquieu”, their “compatriot,” citing his reflections on the English constitution in the *Spirit of Laws* (Book XI, Chapter VI).

Demands for constitutional reform were put on hold until the end of the US War of Independence, for throughout that conflict (1775-1783), the province of Québec was kept in a state of war and its population forced to submit to the system of generals imposed by Governor Sir Guy Carleton and his successor, General Frederick Haldimand.⁴ Haldimand's departure for London on November 16, 1784, gave the send-off to the reformist movement, which rallied the main French and English representatives of the bourgeois elite of Montreal and Quebec City.⁵

Appeal of the British constitutional model

The alliance of anglophone and francophone bourgeois forces within the reformist movement brought about the joint drafting of petitions and bills addressed, respectively, to the King and the two houses of Parliament. As the first and foremost constitutional reform, those entreaties sought the establishment of a House of Assembly “indiscriminately comprised of old and new subjects... freely elected by the inhabitants of town and country.” In February 1785 the reformist leaders took the initiative of distributing a tract soliciting public support for their demands. That pamphlet praised the “English Constitution” as “the most apt to secure the people's happiness.” “This constitution, envied by all other nations and admired by their finest writers, protects the poor from the rich and powerful. The humble, peaceable peasant, seeing only the laws of his country over him and having no cause to fear the imperious conduct of those in power, can spurn their threats and live peaceably without envying or dreading the powerful.”

⁴ The *Quebec Act* and wartime conditions favoured the installation of an authoritarian government. See Hilda Neatby, *Quebec: The Revolutionary Age, 1760-1791*, Toronto, 1966, chapters 11-12.

⁵ See chapter IV of the doctoral dissertation of Pierre Tousignant, *La genèse et l'avènement de la Constitution de 1791*, Université de Montréal, 1971.

³ For the complete text of that letter, see Gustave Lanctot, *Le Canada et la Révolution américaine, 1774-1783*, Montréal, 1965, 281-291.

Noting that Québec was “the only” British province in North America to “be deprived of the substantial benefits” of the British constitution, the reformists voiced confidence that the constitution would be granted “in all justice and necessity to the French-Canadian people, the many English subjects settled in the province, and the American [Loyalist] refugees, our good and new compatriots.”⁶

Events in France during the period 1789-1791, which ultimately led to the shaky provisional constitutional monarchy the same year that the British Parliament voted the new provincial constitution for Lower and Upper Canada, helped convince the Canadian reformists that the French people, too, were engaged in a political struggle to obtain “their rights to the privileges of a free constitution.” So it was that the citizens of Quebec City celebrated the proclamation of the *Constitutional Act* on December 26, 1791, acclaiming their “new Constitution” and also raising a toast to the “French Revolution and true liberty throughout the universe.”⁷

The publisher of *The Quebec Gazette* availed himself of that opportunity to print the complete text of the first constitution of the French National Assembly, which had been promulgated on September 14, 1791. He found the occasion all the more propitious as, in his own words. “Today, the *Canadiens* (descended from the French) [saw themselves] elevated to the dignity of sharing in [provincial] legislation through the generosity of the first free nation of Europe.” And the publisher urged his readers to “submit to reasoned analysis” that constitutional text, described as the “fruit of the legislative wisdom of the French.”⁸ The open-mindedness displayed by that young Scottish publisher and printer by the name of Samuel Neilson bore clear witness to the influence of the main ideological trends then afoot throughout the Atlantic. He doubtless saw in that first French Constitution the expression of eighteenth-century liberal thought as expressed by Baron de Montesquieu in his famous treatise *The Spirit of Laws* (1748): “Liberty is the right to do whatever the laws allow.”

Montesquieu's renown in the Anglo-Saxon world stemmed largely from his reflections upon the

English constitution, which he presented as a model of free government (Book XI, Chapter VI). His theory of the separation of powers as the constitutional basis for political freedom brought such fame that, of all the philosophers of the Enlightenment and modern-day thinkers, his was the name most often cited by the founding fathers of the American nation meeting in Philadelphia in 1787 to draft a constitution which two years later was to become the “supreme law” of the young Federal Republic of the United States.

Unlike the American revolutionary experience, which brought about a stable constitutional regime, the French Revolution engendered a revolutionary dynamic that hindered attempts to frame the nation's constitution. According to Jacques Pierre Brissot de Warville, a member of the Legislative Assembly, it would have taken a “revolutionary king” to put the first constitution emerging from the French Revolution in good working order. But less than a year after that constitution was proclaimed, the overthrow of the monarchy rendered the government of France “radically provisional.”⁹

The French-Canadian reformists proved more interested in learning about the parliamentary government as British subjects than in envying the fate of their former compatriots launched on the road to republicanism. The speeches and tracts aimed at informing the Canadian public about the new constitution left no doubt as to the incomparable advantages of the British constitutional model. Writing under the pen name Solon, in reference to the Athenian reformist legislator, one of the Seven Wise Men of Greece, one political commentator published a panegyric on the articles of the Constitutional Act in four consecutive issues of *The Quebec Gazette*.¹⁰ He concluded his propagandizing in these words: “With the new Constitution, we gaze onto the Future and delight in contemplating our future condition as enlightened, free and independent men, as active and industrious citizens, as loyal and faithful subjects of our King, and solidly attached to the British Nation, which has shown its solicitude by rendering unto all individuals the enjoyment of their civil rights.”

Their new constitution gave French-Canadians the opportunity to remain “loyal and faithful subjects” of the British Crown, at the same time becoming “free and independent men” What more or

⁶ That tract was addressed to the “Citizens and Inhabitants of Town and Country in the Province of Québec” and printed on the presses of *The Quebec Gazette*.

⁷ According to a report in the December, 1791, issue of *The Quebec Gazette*, which gave a list of the many “loyal, patriotic toasts”.

⁸ See publisher's presentation in the December 29 issue.

⁹ The expression used by Keith M. Baker in his study “Constitution” published in the *Dictionnaire critique de la Révolution française* under the direction of François Furet and Mona Ozouf (Paris: Flammarion, 1988).

¹⁰ February 23 and March 1, 8 and 15, 1792.

better could they hope for? Indeed, the candidates for membership in Lower Canada's first parliament took up the words "free and independent" in soliciting the votes of their constituents.

From the imperial "aristocratic dream" to the colonial democratic reality

In the British realm of the eighteenth century, theorists of the English constitution saw parliamentary monarchy as a mixed system of government based on balance of the powers held by the Crown, the nobility in the House of Lords, and the elected representatives of the people in the House of Commons. Each of those bodies represented one of the three existing forms of government — monarchy, aristocracy and democracy — that operated through mutual checks on the executive and legislative powers divided among King, Lords and Commons. One of the most noted English constitutional theorists, Sir William Blackstone, described principles of operation of this three-part model in his *Commentaries on the Laws of England* (4 volumes, 1765-1769): "Herein... consists the true excellence of the English government, that all the parts of it form a mutual check upon each other. In the Legislature, the people are a check upon the nobility, the nobility a check upon the people, by the mutual privilege of rejecting what the other has resolved; while the king is a check upon both, which preserves the executive power from encroachments. And this executive power is again checked and kept within due bounds by the two houses, through the privilege they have on enquiring into, impeaching, and punishing the conduct (not indeed of the king, which would destroy his constitutional independence; but, which is more beneficial to the public) of his evil and pernicious counsellors."

But this idealized description of the workings of the British Constitution failed to reckon with the social and political reality of a parliament that, since the "glorious revolution" of 1688-89, had become the private domain of an aristocratic oligarchy of powerful landlords whose interests were closely tied to those of the Court and the Crown in terms of the exercise and control of power. According to the historian J. H. Plumb, during the first half of the eighteenth century, the Whig Party, headed by Prime Minister Sir Robert Walpole, "fused the interests of aristocracy, high finance and executive government, a process extended by Walpole to embrace the bulk of the landed gentry.

By doing so, he put the noblemen and gentlemen back at the heart of English political society."¹¹

The chief role of the aristocratic parliamentary oligarchy within such a power structure was to preserve national political unity by binding English landed society to the government. And with a rapidly growing empire, national political unity could not be confined to the motherland. The ruling class had to preserve imperial unity by proclaiming the sovereignty of the British Parliament throughout the colonial empire and, consequently, regarding the colonies as dependencies of the British kingdom. Faced with the threat of separation of the Thirteen, one political commentator had no reservations about declaring in the capital of the empire, "I have always considered the Colonies as the great farms of the public and the Colonists as our tenants."¹²

Metropolitan authorities ran the affairs of the empire with the attitude of feudal lords and thus provoked the North American revolt by demanding "full and total submission" of the rebellious colonies. The intransigence of the aristocratic oligarchy that headed the imperial government made the revolutionary crisis inevitable. The historian Charles R. Ritcheson gives a clear summary of the root problem underlying the fateful break: "There was simply no way to reconcile local autonomy and imperial sovereignty within the context of the eighteenth-century British Constitution."¹³

Canada's *Constitutional Act, 1791*, should be regarded as the fruit of lessons derived from the American Revolution by Secretary of State William Wyndham Grenville, who was promoted to the House of Lords even before royal assent of that act. The title "Lord Grenville's Act" ascribed by the historian Helen Taft Manning clearly bespeaks its spirit.¹⁴

¹¹ J. H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London: Macmillan, 1967). This work was republished by Penguin Books in 1969. The quote is found on page 187. See also W. A. Speck, *Stability and Strife: England, 1714-1760. The New History of England* (London: Edward Arnold, and Cambridge, Mass: Harvard University Press, 1977). In Chapter 6, "The Making of the English Ruling Class," the author writes: "The aristocracy and gentry, together with merchants, plutocrats and leading professional men, amalgamated to form a narrow oligarchy which controlled all the levers of power, at the center and in the provinces." (p 164).

¹² *The London Packet*, January 5, 1775.

¹³ *British Politics and the American Revolution* (Norman: University of Oklahoma Press, 1954). See author's preface.

¹⁴ Title of the second chapter of her study *The Revolt of French Canada, 1800-1835*, Toronto: Macmillan, 1962.

A worthy representative of the ruling class, Secretary of State Grenville drew from the British constitutional model in hopes of remedying the constitutional weaknesses of the former thirteen colonial governments in North America. In his view, the fundamental error of the metropolitan government had been to allow the provincial legislatures free exercise of power — which had contributed toward bolstering the spirit of independence and freedom. Realizing full well that he could not prevent similar developments in Canada, Grenville nevertheless hoped to slow their progress. Thus he contemplated setting up legislative councils (for Upper and Lower Canada) whose members, appointed for life, would form an aristocratic body modelled on the House of Lords and dedicated to the interests of the British Crown. He even planned to endow those legislative counsellors with marks of honour or distinction, accompanied by hereditary privileges. As he explained to Governor Lord Dorchester, “The object of these regulations is... to give the Upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the old Colonial Governments.”¹⁵

To that legislator's mind, the chief function of such a legislative council would be to counterbalance the democratic influence of the House Assembly and safeguard the balance of powers advocated by British constitutional theorists by virtue of the principle of a mixed and balanced constitution. In practice, the role of the legislative council of Lower Canada was inseparable from its method of recruitment and composition. Not only were the legislative counsellors appointed by the Crown on the governor's recommendation; many of them were also members of the Executive Council. In the famous *Durham Report of 1839*, Lord Durham commented in this regard, “The majority [of the Legislative Council] was always composed of members of the party which conducted the executive government. The Legislative Council was hardly anything but a veto in the hands of public functionaries on all the acts of that popular branch of the legislature.” The Ninety-Two Resolutions of 1834 had denounced the composition of that legislative body as the “radical flaw” in the *Constitutional Act, 1791*, and demanded an elected body. But long before the Patriote Party was formed under the impetus of Louis-Joseph Papineau and the struggle for control of the legislative power was radicalized, there had been a confrontation between Lord

Grenville's “aristocratic dream” and the democratic aspirations of the colonies.

In 1784 Pierre du Calvet, who spearheaded the Canadian reformist movement, proposed the establishment of a legislative council in which “at least half the members” would be elected “annually” to provide “at least some beginnings of representation on a national scale.”¹⁶ Adam Lymburner, who had been delegated to London as spokesman for the English colonial bourgeoisie, was given the opportunity to address the Bar of the House of Commons during parliamentary debates on the draft of Canada's new constitution. He delivered an impassioned plea in favour of Québec's Protestant minority, whose fate he likened to that of children of Israel exiled into Egypt.¹⁷ During his address he made a probing critique of the separation of Lower and Upper Canada as being contrary to what nature had united by geography and prejudicial to both British interests in North America and the national bonds uniting the sons of the motherland. Lymburner described Minister Glenville's cherished plan to create an hereditary aristocratic body as “absolutely ridiculous,” pointing out that the parcelling out of land ownership under the seigneurial system negated that which, thanks to the laws of primogeniture, allowed the representatives of noble families in England “to support the Dignity and Splendour of their Situations, and to live in that State of Independence which secures the proper Respect to their elevated Rank, as hereditary Peers of the Realm.” In Canada, Lymburner argued, wealth lay in the hands of the merchant middle class, who “naturally” aspired to political power proportional to their economic importance and social influence. Wishing to see the colonial bourgeoisie reap the full advantages of the House of Assembly — that glorious institution of British genius — Lymburner deemed the number of thirty representatives set by the original draft woefully inadequate. Given the prospect of rapid population growth exceeding half a million in the space of one generation, he saw the need for at least double that number in order to “command the Respect and assure the Confidence of the People.” The number of legislative assembly seats did in fact increase to

¹⁵ From a letter dated October 20, 1789, published by the archivists Adam Shortt and Arthur G. Doughty, Ed., *Documents relating to the Constitutional History of Canada* (second edition, 2 volumes, Ottawa, 1918), II: 989.

¹⁶ See his detailed government plan in Pierre Du Calvet, *Appel à la Justice de l'État*, London, 1784, 195-220. Excerpts from this work were presented by Jean-Paul de Lagrave and Jacques-G. Ruellaird under the same title in a recent edition published by Griffon d'Argile, Sainte-Foy, Québec, 1986. Concerning Du Calvet, see *Dictionary of Canadian Biography*, IV: 246-251.

¹⁷ *The Paper read at the Bar of the House of Commons, by Mr. Lymburner... the 23rd of March 1791*, published by William Moore, Québec: Herald Printing Office, 1791.

fifty for a population of roughly 175 000 in 1791, more than ninety per cent of whom were francophone.

Québec's first call to the people

The first election campaign took place in May and June 1792. Article XX of the *Constitutional Act* set out the qualifications of the voters, whom it designated as "persons," without mention of sex, which left women the possibility of voting, provided they were property owners (generally through widowhood). But men did not accept women's suffrage as a recognized right, and the exercise of the feminine franchise was limited to certain counties and was also circumstantial, depending on the election stakes. In 1834 the Legislative Assembly of Lower Canada, which was dominated by the deputies of the Patriote Party under the leadership of Louis-Joseph Papineau, passed a bill excluding women from the electoral process.¹⁸

Article XX defined two main classes of voters - rural and city dwellers - who were not subject to the same voting qualifications. Rural voters had to own lands or tenements producing annual revenue of forty shillings sterling (equivalent of £2) or more, as was required in England. In the cities propertied voters had to own a dwelling house and lot of ground generating a minimum annual income of £5, whereas tenant urban voters were required to pay a minimum annual rent of £10. Voters in all of those categories had to be aged 21 or over and had to be British subjects by birth or naturalization or through the Conquest and cession of the Province of Canada (Article XXII).

In the social and economic context of Lower Canada, those voting qualifications gave the vote to the vast majority of property owners in the province. Historian Fernand Ouellet estimates that "at least one Lower-Canadian out of eight was entitled to vote,"¹⁹ meaning more than 20 000 adult voters out of a population of roughly 175 000. Dividing that electorate among the twenty-seven polling divisions in the province gives an average of 800 electors per county. There were five urban divisions, four of them encompassing Montreal and Quebec City, with some 400

electors per ward (East Ward and West Ward, and Lower Town and Upper Town for Quebec City). Twenty-five of the twenty-seven polling divisions were represented by two deputies, and each elector was entitled to vote for two candidates. Voters declared openly their preference at public meetings under the more or less watchful eye of the electoral officer, who was supposed to draw up a complete list of all voters and indicate their choice. Given that practically all the official records from that first election campaign were later destroyed, it is impossible to determine the county breakdown of the votes or analyze the election results.²⁰

Six months before the first elections, the citizens of Quebec City had set up a Constitution Club to champion their new constitution. That group soon became an election propaganda tool for the Anglo-Scottish candidates. As the *Constitutional Act* imposed no financial conditions on the people's future elected officials, the spokesmen of the colonial bourgeoisie attempted to influence the electorate. On the eve of the elections, the members of the Constitution Club met to discuss the "necessary qualifications" for the future deputies of the House of Assembly. The candidates had to be "men of virtue, independent principles and good education... and have substantial assets in the form of property or trade."²¹ They approved the printing at the club's expense and the province-wide distribution of a piece that had appeared in *The Quebec Gazette* under the pen name Probus. In that address "To the Voters of Canada," the author listed the necessary qualifications for the people's elected officials and underscored the qualification which he felt took precedence over all others — independence of fortune.²²

The first deputation of the first Parliament of Lower Canada included a respectable number of representatives of the colonial Anglo-Scottish middle class, which held sixteen of the fifty seats in the House of Assembly. Half of the deputies were merchants and businessmen, including eleven anglophones and fourteen francophones.²³ Six of the eight deputies for Montreal and Quebec City represented the anglophone bourgeois elite. The only francophone deputy from Quebec City, the lawyer

¹⁸ See Allan Greer, "La république des hommes: les Patriotes de 1837 face aux femmes," *Revue d'histoire de l'Amérique française*, 44, 4 (spring 1991), pages 507-528. For a more general treatment of women's suffrage, see John Garner, *The Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969), chap. 12.

¹⁹ Fernand Ouellet, *Lower Canada, 1791-1840* (Toronto: Mc Clelland and Stewart, 1980), page 25.

²⁰ Pierre Tousignant, "La première campagne électorale des Canadiens" in *Histoire sociale - Social History*, VIII, 15 (May 1975), pages 120-148.

²¹ As reported in the June 14, 1792, issue of *The Quebec Gazette*.

²² Issue of June 7, 1792.

²³ Our survey is based on the social and vocational profile of the deputation in 1792. It differs somewhat from the one presented by Fernand Ouellet, *op. cit.*, pages 26-27.

Jean-Antoine Panet, was to become the first speaker of the House of Assembly. The representation of fourteen French-Canadian merchants, or forty per cent of the francophone deputation, showed the importance of the market economy in the rural world of that time. Merchants from the Richelieu Valley, Verchères and l'Assomption were elected in the counties of Greater Montreal. The merchant function went well with property ownership among the representatives of the Anglo-Scottish middle class, which had five seigneurs. On the French-Canadian side, the seigneurial group was well represented with some twelve deputies, a good half of whom could claim membership in the gentry. The middle class of French-Canadian professionals had only a small representation compared to what it would later become. There were three lawyers, a single notary (Joseph Papineau, the father) and a land surveyor. Three deputies were clerks, two were navigators and two gentleman farmers. One anglophone military officer represented the burg of William Henry (Sorel).

By way of conclusion, it is fitting to return to the theme of liberty as the French-Canadian reformists used it in connection with the advent of representative democracy in Canada. In the new province of Lower Canada there were "fanatic partisans of popular power" for whom "liberty could be found only in Democracy," in the words of one Anglo-Canadian observer.²⁴ He went on to plead the cause of democratic power which, within the framework of the British Constitution, was to limit the powers exercised by the monarchy and the aristocracy "and prevent one from leaning toward tyranny and the other toward oligarchy." From his liberal viewpoint, "the functions [of democracy] become all the more important [as its representatives] are elected by the free vote of all the people... [and] its administration comprises the national authority." That political observer expressed his surprise that many members of our House of Commons did not dare wear the title of "democrat," whereas they were democrats by condition, right and fact. But in those times when the French revolutionaries had just abolished the monarchy and executed their king, there was good cause to refrain from displaying one's democratic convictions, for fear of passing for partisans of "unbridled liberty."

Pierre Tousignant, "The Birth of Representative Democracy in Canada" in *Forces*, No. 96, Winter 1991-1992, pages 11-13.

²⁴ Letter to the editor of *Quebec Magazine/ Le Magasin de Québec*, Volume II (February-August 1793), pages 89-90. That first bilingual monthly magazine was launched by Samuel Neilson in September 1792, but shut down less than two years later.

Appeal from the US Congress to Canadians (1774)

Through the Royal Proclamation of October 7, 1763 issued by the British sovereign, George III, changes were made to the territory and regime in the French possessions in North America ceded under the Treaty of Paris. Canada ceased to exist and became the Province of Québec, whose territory was reduced to the area surrounding the St. Lawrence valley, inhabited by roughly 70 000 French-speaking Catholic Canadiens. English and French Huguenot settlers arrived in the new province, numbering barely 450 souls, but determined to take control of the colony. The Test Oath imposed by the Royal Proclamation excluded the Canadiens from public office. Since only British civil and criminal law was official, the Canadiens lost the benefit of their French law. Trade between France and its former colony was no longer possible, nor were the clergy's relations with Rome. A governor, assisted by a restricted council, administered the colony. The Proclamation stipulated that the governor must convene, once the state of and conditions in the colony permitted, an assembly of the people of the province, which none of the governors who headed the colony dared to do.

The civil government of 1763 subjected the province's inhabitants to a harsh regime. The Canadiens had, to some extent, to abandon their religion, language and law. Several governors, such as Murray (1763-1766) and Carleton (1766-1768), noticed that the regime was overly severe and endeavoured to temper it through compromise. However, the English merchants and public servants denounced these unacceptable favours. They submitted petitions to obtain a house of assembly from which Catholics would be excluded. The Canadiens saw injustice and tyranny in the Proclamation. They demanded the restoration of French laws and religious tolerance. Starting in 1770, they began to openly discuss their political future. They held numerous public meetings and drew up numerous petitions. They eagerly read Locke, Harrington and Blackstone and closely followed the conflicts between the thirteen American colonies and Britain. The French-speaking lower middle class, faced with the determination of the governors and the English-speaking minority to confirm their domination, demanded around 1784 the creation of a house of assembly that would represent the will of the Canadian people.

Meanwhile, the demands of the American colonies suggested a military conflict with Britain,

which might spill over into the Province of Québec. London ultimately relaxed the regime imposed in 1763, undoubtedly to ensure the loyalty of the Canadiens in the event of such a conflict. Despite opposition from seasoned parliamentarians such as Edmund Burke and Lord Chatam, in May 1774 Westminster adopted the Quebec Act, a new constitutional law, to which the king assented in June. Britain granted the Canadiens the restoration of a significant portion of their old borders with New France, the reestablishment of French civil law, freedom of religion through the recognition of the tithe, the abolition of the Test Oath, and the broadening of the appointed councillors. However, there was no question of an elected assembly. The Quebec Act deeply disappointed Québec's English merchants and they demanded its abolition. The Act also caused anxiety in the American colonies.

On September 5, 1774, the Continental Congress of the thirteen colonies convened in Philadelphia. On October 26, the delegates resolved to send to the people of Canada an appeal signed by the president of the Congress. The appeal was translated into French and 2 000 copies were printed in Philadelphia by Fleury Mesplet, founder of *La Gazette de Montréal* in 1778.² In the appeal, the delegates to the Congress invited the Canadians to join in a confederation that would oppose the arbitrariness of the British colonial government. This was not a call to revolt. The ideas put forward in the appeal foreshadowed the Declaration of Independence of 1776. It defined the demands of a genuinely democratic government, i.e. participation by the people in government, legal guarantees such as habeas corpus, prohibition on *corvées*, and freedom of the press. Montesquieu was cited extensively to show the Canadians that the Quebec Act in no way guaranteed their civil and political freedoms and that only a distribution and apportionment of various powers of the State in different hands, thus creating checks and balances, can ensure freedom and the prosperity of men. Switzerland was cited as an example of a confederation of Protestant and Catholic States living peacefully and wisely. The letter ended with an appeal to Canadians, suggesting that they elect their representatives who, assembled at a provincial congress, would send delegates to the Congress in Philadelphia.

Other letters were to arrive, sent by the Continental Congress or the congress of other colonies, e.g. Massachusetts and New York. In May 1775,

the delegates from the thirteen colonies again convened in Philadelphia under the presidency of John Hancock and on May 29, adopted a second appeal to the Canadians, with the same import as the first one. The conflict between Britain and the American colonies had entered a critical phase and the delegates decided to engage in armed resistance. In the summer of 1775, General Montgomery's troops invaded southern Québec. General Arnold's army reached Québec in November. Judging by observations at the time, it would seem that the message in the letters from the Congress to the Canadians elicited some response, despite the hazards of their dissemination. American troops encountered a people that was fairly sympathetic to their cause. The clergy and the seigneurs advocated obedience to the British Crown. The French translation of an appeal to the people of Great Britain had also circulated in the province, which did not spare the Canadians. The letter revealed that the Congress had played a double game with regard to Canada, which displeased the leading French-speaking citizens.

Be that as it may, the American revolutionary episode in Canada was short-lived. In May 1776, a British fleet of 10 000 men lay at anchor in Québec City. The Americans, few in number and poorly organized, fled. The American campaign in Canada was a partial failure. It delayed the British counter-attack and disseminated liberal, republican ideals among the Canadians.³ The American army achieved its great victories on other fronts. France, which had been an official ally of the insurgent colonies since 1778, preferred to let Britain exercise a permanent threat at the Canadian border instead of reconquering Canada. The destinies of these colonies, which had been involved in a revolutionary adventure, were to differ markedly. The Province of Québec and the other northern colonies in North America would remain under the British Crown. On September 3, 1783, France and Great Britain signed the Treaty of Versailles, granting the 13 American colonies their independence.

FRIENDS AND FELLOW-SUBJECTS; We, the Delegates of the Colonies [...] deputed by the inhabitants of the said Colonies to represent them in a General Congress, at Philadelphia, in the Province of Pennsylvania, to consult together concerning the best methods to obtain redress of our afflicting Grievances; having accordingly assembled and taken into our most serious consideration the state of publick affairs on this Continent, have thought proper to ad-

² See Marcel Trudel, *La révolution américaine. Pourquoi la France refuse le Canada (1775-1783)*. Sillery: Les éditions du Boréal Express, 1976.

³ Robert Chodos and Eric Hamovitch, *Quebec and the American Dream*. Toronto: Between the Lines, 1991, p. 38.

dress your Province, as a member therein deeply interested.

When the fortune of war, after a gallant and glorious resistance, had incorporated you with the body of English subjects, we rejoiced in the truly valuable addition, both on our own and your account; expecting, as courage and generosity are naturally united, our brave enemies would become our hearty friends, and that the Divine Being would bless to you the dispensation of his over-ruling providence, by securing to you, and your latest posterity, the inestimable advantages of a free English Constitution of Government, which it is the privilege of all English subjects to enjoy.

These hopes were confirmed by the King's Proclamation, issued in the year 1763, plighting the publick faith for your full enjoyment of those advantages.

Little did we imagine that any succeeding Ministers would so audaciously and cruelly abuse the Royal authority as to withhold from you the fruition of the irrevocable rights to which you were thus justly entitled. [...]

These are the invaluable rights that form a considerable part of our mild system of Government; that, sending its equitable energy through all ranks and classes of men, defends the poor from the rich, the weak from the powerful, the industrious from the rapacious, the peaceable from the violent, the tenants from the lords, and all from their superiours. [...]

These are the rights you are entitled to, and ought, at this moment, in perfection, to exercise. And what is offered to you, by the late Act of Parliament, in their place? Liberty of conscience in your Religion? No. *God* gave it to you; and the temporal powers with which you have been, and are connected, firmly stipulated for your enjoyment of it. If laws, divine and human, could secure it against the despotick caprices of wicked men, it was secured before. Are the *French* Laws, in civil cases, restored? It seems so. But observe the cautious kindness of the Ministers, who pretend to be your benefactors: The words of the Statute are — that those “laws shall be the rule, until they shall be varied or altered by any ordinances of the Governour and Council.” Is the “certainty and lenity of the Criminal Law of *England* and its benefits and advantages,” commended in the said Statute, and said to “have been sensibly felt by you,” secured to you and your descendants? No. They too are subjected to arbitrary “alterations” by the Governour and Council; and a power is expressly reserved of ap-

pointing “such Courts of criminal, civil, and ecclesiastical jurisdiction as shall be thought proper”. [...] Have you an Assembly composed of worthy men, elected by yourselves, and in whom you can confide, to make laws for you, to watch over your welfare, and to direct in what quantity, and in what manner your money shall be taken from you? No. The power of making laws for you is lodged in the Governour and Council, all of them dependent upon, and removable at the pleasure of a Minister. [...]

What would your countryman, the immortal *Montesquieu*, have said to such a plan of domination as has been framed for you? Hear this words, with an intenseness of thought suited to the importance of the subject: “In a free state, every man, who is supposed a free agent, ought to be concerned in his own government: Therefore the Legislative should reside in the whole body of the People or their Representatives.” [...]

Apply these decisive maxims, sanctified by the authority of a name which all *Europe* reveres, to your own state. You have a Governour, it may be urged, vested with the Executive powers, or the powers of Administration; in him, and in your Council, is lodged the power of making laws. You have Judges, who are to decide every cause affecting your lives, liberty, or property. Here is, indeed, an appearance of the several powers being separated and distributed into different hands, for checks, one upon another; the only effectual mode ever invented by the wit of men, to promote their freedom and prosperity. [...]

Your Judges, and your Legislative Council, as it is called, are dependent on your Governour, and he is dependent on the servant of the Crown in *Great Britain*. The Legislative, Executive, and Judging powers are all moved by the nods of a Minister. Privileges and immunities last no longer than his smiles. When he frowns, their feeble forms dissolve. [...]

We are too well acquainted with the liberality of sentiment distinguishing your Nation, to imagine that difference of Religion will prejudice you against a hearty amity with us. [...] The Swiss Cantons furnish a memorable proof of this truth. Their Union is composed of Roman Catholick and Protestant States, living in the utmost concord and peace with one another, and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them. [...]

We do not ask you, by this Address, to commence acts of hostility against the Government of

our common Sovereign. We only invite you to consult your own glory and welfare, and not to suffer yourselves to be inveigled or intimidated by infamous Ministers, so far as to become the instruments of their cruelty and despotism; but to unite with us in one social compact, formed on the generous principles of equal liberty, and cemented by such an exchange of beneficial and endearing offices as to render it perpetual. In order to complete this highly desirable Union, we submit it to your consideration, whether it may not be expedient for you to meet together, in your several Towns and Districts, and elect Deputies, who, afterwards meeting in a Provincial Congress, may choose Delegates to represent your Province in the Continental Congress, to be held at Philadelphia, on the tenth day of May, 1775. [...]

26 October 1774

By order of Congress,
HENRY MIDDLETON, President.

Journal of the Continental Congress, October 26, 1774, pages 930-934.

Alexis de Tocqueville in Lower Canada (1831)

Alexis de Tocqueville (1805-1859), a French magistrate and writer who went to North America to investigate the American penitentiary system, spent 10 days in Lower Canada at the end of the summer of 1831. This sojourn was but one of numerous stages in a lengthy journey that he made with his friend Gustave de Beaumont in the United States. Upon his return to France, he wrote *Democracy in America*, a brilliant work, which, more than any other, captured the originality of and dilemmas inherent in the American experience of democracy. In the work, Tocqueville made little reference to his trip to Lower Canada, except to occasionally mention France's lost opportunities in North America. Several notebooks and letters remain from his trip. His observations have outstanding documentary value from the standpoint of what they record and the quality of the witness, one of the 19th century's foremost political thinkers. Several excerpts are presented below.

Tocqueville's observations on Lower Canada waver between optimism and pessimism. At that time, Lower Canada had a population of 553 000, including 450 000 French-speakers. First, Tocqueville, who had thought just before his sojourn in Lower Canada that little remained there of the French presence since the Conquest of 1763, was delighted to discover a people, "the body of a distinct nation", which had preserved the traits of its nationality. Neither prosperous nor destitute, the French-

speaking inhabitants of North America seemed to him to lead a fairly peaceful existence, sustained by a piousness without excess. He was struck by the American character of these French-speakers who, while they had maintained their national character, displayed the spirit of equality and simplicity that he had noted among the Americans. Tocqueville even wrote: "The French of America are to the French of France as the Americans are to the English." They have succeeded in preserving their democratic institutions, for which they have developed a taste, which explains their strength. However, Tocqueville was concerned about several early warning signs that the fate of these French-speakers in North America was not yet settled. He feared the dependence of part of the elite of Lower Canada on colonial power, the inequality that reserved for the British control over trade and power, the massive immigration of new settlers, who would supplant in number the Canadians, and a certain apathy among the latter.

During his trip, Tocqueville met with a number of important persons, including John Neilson, but not with Louis-Joseph Papineau. A native of Scotland, Neilson (1776-1848), known as the "Canadian Franklin," reached Québec in 1790. Upon attaining the age of majority, he took over the direction of the *Quebec Gazette*, founded in 1764. Elected to the Assembly of Lower Canada from 1818 to 1834, he embraced the cause of the Patriotes and was among those who vigorously fought the proposed union of the two Canadas in 1822. On several occasions, he took to London petitions to defend the political freedoms of Lower Canada. In the early 1830s, he distanced himself from Papineau. The Ninety-Two Resolutions of 1834 and the insurrections in 1837-1838 completely separated them. Neilson nonetheless continued to defend the cause of French Canada. He denounced the Durham Report and the Act of Union of 1840. Tocqueville's conversation with Neilson is a veritable interview that took stock of the social and political situation in Lower Canada.

In Québec, as elsewhere, Tocqueville's work continues to fascinate and give rise to reflection and studies. The political scientist Gérard Bergeron devoted a book to Tocqueville's trip to Lower Canada,¹

¹ Gérard Bergeron, *Quand Tocqueville et Siegfried nous observaient...* Montréal: Presses de l'Université du Québec, 1990, 177 pages. By the same author, "L'interlude canadien pendant le voyage en Amérique d'Alexis de Tocqueville et de Gustave de Beaumont" in *The Tocqueville Review / La Revue Tocqueville*, 12, 1990-1991, pages 127-140. See also Jacques Vallée, *Tocqueville au Bas-Canada*. Montréal: Éditions du Jour, 1973.

philosopher Daniel Jacques focused instead on the philosophical aspect of his work.²

27th August 1831

Conversation with Mr. Neilson

Mr. Neilson is a Scot. Born in Canada and related by marriage to French Canadians, he speaks French as easily as his own language. Mr. Neilson, although a foreigner, may be regarded as one of the leaders of the French Canadians in all their struggles with the English government. Although he is a Protestant, for fifteen years continuously the French Canadians have elected him as a member of the House of Assembly. He has been an ardent supporter of all measures favouring the French Canadians. He with two others was sent in 1825 to England to plead for redress of grievances. Mr. Neilson has a lively and original turn of mind. The antithesis between his birth and his social position leads sometimes to strange contrasts in his ideas and in his conversation.

Q. What does Canada cost the English government in the current year?

A. Between £200,00 and £250,000.

Q. Does Canada bring in anything for it?

A. Nothing. The customs dues are used for the colony. We would fight rather than give up a penny of our money to the English.

Q. But what interest has England got in keeping Canada?

A. The interest that great lords have in keeping great possessions that figure in their title deeds, but cause them great expenses and often involve them in unpleasant lawsuits. But one could not deny that England has an indirect interest in keeping us. In case of war with the United States, the St. Lawrence provides a passage for goods and armies right into the heart of America. In case of war with the peoples of Northern Europe, Canada would supply the timber for building which she needs. Besides the cost is not as heavy as one supposes. England is bound to rule the sea, not for the glory of it, but for existence. The expenses which she is obliged to incur to gain that supremacy make the occupation of her colonies much less costly for her than they would be for a country only interested in intercourse with its colonies.

Q. Do you think the French Canadians will soon throw off the English yoke?

A. No, at least unless England forces us to it. Otherwise it is completely against our interest to make ourselves independent. We are still only 600 [000] souls in Lower Canada; if we became independent, we should quickly be enfolded by the United States. Our people would, so to say, be crushed under an irresistible mass of immigrants. We must wait till we are numerous enough to defend our nationality. Then we will become the Canadian people. Left to themselves the people here are increasing as fast as in the United States. At the time of the conquest in 1765 we were only 60,000.

Q. Do you think the French race will ever manage to get free from the English race? (This question was put cautiously in view of the birth of the man to whom I spoke.)

A. No. I think the two races will live and mix in the same land, and that English will remain the language of official business. North America will be English; fortune has decided that. But the French race in Canada will not disappear. The amalgam is not as difficult to make as you think. Here it is above all the clergy who sustain your language. The clergy is the only enlightened and intellectual class which needs to speak French and which speaks it unadulterated.

Q. What is the character of the French Canadian peasant?

A. In my view it is an admirable race. The peasant is simple in his tastes, very tender in his family affections, very chaste in morals, very sociable, and polite in his manners; with all that he is very well suited to resist oppression, independent and warlike, and brought up in the spirit of equality. Public opinion has incredible power here. There is no authority in the villages, but public order is better maintained there than in any other place on earth. If a man commits an offence, people shun him, and he must leave the village. If a theft is committed, the guilty man is not denounced, but he is dishonoured and obliged to flee. There has not been an execution in Canada for ten years. Natural children are something almost unknown in our country districts.

I remember a talk with XX (I have forgotten his name); for two hundred years there had not been a single one; ten years ago an Englishman who came to live there seduced a girl; the scandal was terrible.

The French Canadian is tenderly attached to the land which saw his birth, to his church tower and to his family. It is that which makes it so difficult to induce him to go and seek his fortune elsewhere. Besides, as I was saying, he is eminently sociable; friendly meetings, divine service together, gatherings at the church door, those are his only pleasures. The French Canadian is deeply religious; he pays his tithe without reluctance. Any one could avoid that by declaring himself a Protestant, but no such case has yet

² Daniel Jacques, *Tocqueville et la modernité. La question de l'individualité dans la Démocratie en Amérique*. Montréal: Boréal, 1995, 178 pages. See also Marc Chevrier, "Tocqueville ou les dilemmes de la démocratie" in *Les cahiers d'histoire du Québec au XX^e siècle*, 5, 1996, pages 139-143.

occurred. The clergy here is just one compact body with the people. It shares their views, takes part in their political interests, and fights with them against the powers-that-be. Sprung from the people, it only exists for the people. Here it is accused of *demagoguery*. I have never heard that that is a complaint made against Catholic priests in Europe. The fact is that they are liberal, enlightened and nonetheless deeply believing, and their morals are exemplary. I myself am a proof of their tolerance; a Protestant, I have been elected ten times by Catholics to our House of Commons, and I have never heard it suggested that anyone had ever tried to create the slightest prejudice against me on account of my religion. The French priests who come here from Europe have the same moral standards as ours, but their political approach is absolutely different.

I told you that our French Canadian peasants have a strong social sense. That sense leads them to help one another in all moments of crisis. If one man's field suffers a disaster, it is usual for the whole community to set to work to put it right. Recently XX's barn was struck by lightning; five days later it had been rebuilt by the voluntary work of neighbours.

Q. There are still some traces of feudalism here?

A. Yes, but so slight that they are almost unnoticed; firstly, the lord receives an almost nominal rent for the land which he originally granted. It may for instance be 6 to 8 francs for 90 acres [about 135 English acres]. Secondly, corn must be ground at his mill, but he may not charge more than the maximum fixed by law, which is less than one pays in the United States where there is freedom and competition. Then there are dues for "lods et ventes", that is to say that when feudally held land is sold, the seller must give one twelfth of the purchase price to the lord. That would be rather a heavy burden, were it not that the strongest determination of the people is to remain invincibly attached to the land. Those are all the traces of feudalism that remain in Canada. Beyond that the lord has no titular rights and no privileges. There is not and cannot be any nobility. Here, as in the United States, one must work to live. There are no tenants. So the lord is normally a farmer himself. However, no matter how equal the footing on which the lords now stand, there is still some fear and some jealousy in the people's attitude towards them. It is only by going over to the popular party that a few of them have succeeded in getting elected to the House of Commons. The peasants remember the state of subjection in which they were held under French rule. One word lingers in their memory as a political scarecrow, that is the *taille*. They no longer know exactly what the word means, but for them it stands for something not to be tolerated. I am sure they would

take up arms if there were an attempt to impose any tax whatever to which that name was given.

Q. What conditions of eligibility are there for entry into your House of Commons?

A. There are none.

Q. Who are qualified as voters in the country districts?

A. Anyone with 41 francs income from land is a voter.

Q. Have you no fear of such a great mass of voters?

A. No. All the people have some property and are religious and order-loving; they make good choices and although they take a great interest in the elections, there are hardly ever disturbances at them. The English tried to introduce their system of corruption, but it ran completely aground against the moral standards and honour of our peasants.

Q. What is the position with regard to primary education?

A. It is a long story. In the time of the French there was no education. The French Canadian always had a weapon in his hand. He could not spend his time at school. After the conquest the English were only concerned for their own people. Twenty years ago the government wanted to start education, but it took the matter up clumsily. It shocked religious prejudices. It gave the impression that it wanted to get control of education and to direct it in favour of Protestantism. That at least is what we said, and the scheme ran aground. The English said that the Catholic clergy wanted to keep the people in ignorance. Neither side was telling the truth, but that is the way parties do speak. Four years ago our House of Commons saw clearly that if the French Canadian population did not become educated, it would end up by being entirely absorbed by a foreign population that was growing up by its side and in its midst. Speeches were made, encouragement was given; funds were raised and finally school inspectors were appointed. I am one and I have just completed a tour of duty. Nothing could be more satisfactory than the report which I have to make. The impulse has been given. The people are most active in taking advantage of the chance to get educated. The clergy are all out to help us. We have already got in our schools half the children, about 50,000. In two or three years I am confident we will have them all. Then I hope the French Canadian people will begin to leave the river banks and advance towards the interior. At present we stretch about 120 leagues along both sides of the St. Lawrence, but our line is seldom as much as 10 leagues in depth. However beyond that there is excellent land which is almost always given away for nothing (that is literally so) and which could easily be cultivated. Labour cost 3 francs in the villages and

less in the country. Food is very cheap. The French Canadian peasant makes all necessities for himself; he makes his own shoes, his own clothes and all the woollen stuffs in which he is dressed. (I have seen it.)

Q. Do you think French people could come and settle here?

A. Yes. A year ago our House of Commons passed a law to repeal the aliens legislation. After seven years' residence the foreigner becomes a Canadian and enjoys citizen's rights. [...]

25th August 1831

External appearance: Canada is beyond comparison, of those parts of America which we have visited so far, that which bears the greatest analogy to Europe and, especially, to France. [...]

The basis of the population and the immense majority is everywhere French. But it is easy to see that the French are a conquered people. The rich classes mostly belong to the English race. Although French is the language most universally spoken, the newspapers, the notices and even the shop-signs of French tradesmen are in English. Commercial undertakings are almost all in their hands. They are really the ruling class in Canada. I doubt if this will long be so. The clergy and a great part of the not rich but enlightened classes is French, and they begin to feel their secondary position acutely. The French newspapers that I have read, put up a constant and lively opposition against the English. Up to now the people having few needs and intellectual interests, and leading, in material things, a very comfortable life, has very imperfectly glimpsed its position as a conquered nation and furnished but feeble support to the enlightened classes. But a few years ago the House of Commons, which is almost all French Canadian, has taken measures for a wide extension of education. There is every sign that the new generation will be different from the present generation, and in a few years from now, if the English race is not prodigiously increased by emigration and does not succeed in shutting the French in the area they now occupy, the two peoples will come up against one another. I do not think that they will ever merge, or that an indissoluble union can exist between them. I still hope that the French, in spite of their conquest, will one day form a fine empire on their own in the New World, more enlightened perhaps, more moral and happier than their fathers. At the present moment the division of the races singularly favors domination by England.

28th August 1831

Mr. Neilson came to look for us today to take us to see the country. (As for Mr. Neilson, his

character and position, see the conversation.) This walk could not have given us a more favorable impression of the French Canadian population. We found well-cultivated fields and houses redolent of well-being. We went into several. The main room is furnished with excellent beds; the walls are painted white. The furniture is very clean. A little mirror, a cross or a few engravings of scriptural subjects complete the whole. The peasant is strong, well-built, well-clothed. His welcome has the frank cordiality which the American lacks; he is polite without servility, and receives you on a footing of equality but obligingly. Among those we visited there was even something of distinction in their manners which struck us. (It is true that we were taken to see the first families in the village). All in all this race of men seemed to us inferior to the Americans in knowledge, but superior in qualities of the heart. One had no sense here of that mercantile spirit which obtrudes in all the actions and sayings of an American. The French Canadian's power of reasoning is little cultivated, but it is simple and straightforward; they undoubtedly have fewer ideas than their neighbors, but their sensibility seems more developed; theirs is a life of the heart, the others' of the head.

29th August 1831

[...] We broke away into the paths and gossiped with all the inhabitants whom we met, trying to turn the talk to serious matters. This is what seemed to come out from these talks:

[...] They clearly feel their position as a conquered people, not counting on the goodwill, I would not say of the government, but of the English. All their hopes are fixed on their representatives. They seem to have that exaggerated attachment to them, and especially to Mr. Neilson — "But he is English," they said to us, as if in astonishment or regret — which oppressed people generally have for their protector. Several of them seemed perfectly to understand the need for education, and to take lively pleasure in what had just been done to help it on. All in all we felt that this population could be led, although still incapable of leading itself. We are coming to the moment of crisis. If the French Canadians do not wake out of their apathy, in twenty years from now it will be too late to do so. Everything indicates that the awakening of this people is at hand. But if in this effort the middling and upper classes of the French Canadian population abandon the lower classes, and let themselves be carried in the swing with the English, the French race is lost in America. And that would truly be a pity, for there are here all the elements of a great people. The French of America are to the French of France as the Americans are to the English. They have preserved the greater part

of the original traits of the national character, and have added more morality and more simplicity. They, like them, have broken free from a crowd of prejudices and false points of departure which cause and will cause all the miseries of Europe. In a word, they have in them all that is needed to create a great memory of France in the New World. But will they ever succeed in completely regaining their nationality? [...]

We were able to notice in our talks with the people of this country, a basis of hatred and jealousy of the lords. But the lords have, so to say, no rights; they are, as much as one can be, of the people, and are almost all reduced to cultivating the soil. But the spirit of equality and democracy is alive there as in the United States, although it is not so rationalistic. I found again at the bottom of the hearts of those peasants the political passions which brought about the Revolution and which are still the cause of all our ills. Here they are inoffensive, or almost so, since nothing stands against them. We thought, too, that we noticed that the peasant did not see the clergy's right to levy the tithe without repugnance, and that he was not without envy contemplating the wealth which this tax put into the hands of some ecclesiastics. If religion ever loses its sway in Canada, it will have been by that breach that the enemy has come in. [...]

General remarks. 1st September 1831

[...] But it is certain that:

(1) Lower Canada, luckily for the French race, forms a State apart. Now the French population in Lower Canada is in the proportion of ten to one to the English. It is compact. It has its government and its own Parliament. It really forms the body of a distinct nation. In a Parliament of eighty-four members, there are sixty-four French and twenty English.

(2) Up to now the English have always kept to themselves. They support the government against the mass of the people. All the French newspapers voice opposition, all the English ones support the ministry, with only one exception, *The Vindicator*, at Montreal, and that too was started by French Canadians.

(3) In the towns the English and the French Canadians form two societies. The English make a parade of great luxury; none of the French Canadians have more than very limited wealth; thence jealousy and small-town bickerings.

(4) The English have all the export trade and the main controls of internal trade in their hands. Yet another cause of jealousy.

(5) The English are daily getting possession of lands that the French Canadians regard as reserved for their race.

(6) Finally the English in Canada show all the traits of their character, and the French Canadians have kept all the traits of French character.

So the odds are strongly in favour of Lower Canada finishing up with an entirely French population. But they will never be a numerous people. Everything around them will become English. It will be a drop in the ocean. I am very much afraid that, as Mr. Neilson said in his frank, brisk way, fate has in fact pronounced and North America will be English.

2nd September 1831

Five or six years ago the English government wanted to unite the whole of Canada in one assembly. That was the measure best designed completely to break up the French Canadian nation, so the whole people rose at once and it is from that time that it knows its strength. [...]

The appointment of militia officers is a function of government, but the House of Commons having decided that to be a militia officer it is necessary to reside in the place in question, the result has been to put the command of the armed force almost exclusively in the hands of French Canadians.

A French Canadian told me today that the debates in the House of Commons were lively and hot-headed, and that often hasty resolutions were taken of which one repented when heads had cooled. Might he not have been speaking about a French Chamber?

Alexis de Tocqueville, *Journey to America*, translated by G. Lawrence and edited by J. P. Mayer, London: Faber and Faber, 1959, pages 41-46, 184-185 and 188-193.

Speeches by Louis-Joseph Papineau

An anthology of the texts underlying Québec democracy could not overlook Louis-Joseph Papineau, whose thinking and gestures left their mark on the political history of Lower Canada for most of the 19th century. He inspired and led the struggles opposing parliamentarians and colonial power. Born in 1786, Louis-Joseph Papineau studied law, then, like his father, quickly turned to political life. He entered the Québec Assembly in 1808 and was elected Speaker in 1815. In 1820, he refused to be appointed by Governor Dalhousie to the Executive Council, preferring instead to pursue his struggle against the excesses of colonial power. In 1822, with John Neilson, he headed a delegation from the Assembly of Lower Canada that went to London armed with a petition bearing 60 000 signatures to defeat the proposed union of the two Canadas. In 1826, he became

the leader of the *Parti patriote*. Papineau was a liberal who was convinced of the need for a genuine separation of Church and State. In 1831, he sponsored a law that established the full political equality of Jews. A great orator of formidable eloquence, after 1830 Papineau became the object of a veritable myth. According to historian Fernand Ouellet, he symbolized patriotism, selflessness, strength, energy and courage.¹ His career took a tragic turn after the failure of the *Patriote* insurrections of 1837 and 1838, which forced him into exile in the United States, then in France in 1839, before he returned home in 1845. He entered the Assembly again in 1847, where he sat until 1854. While, prior to the events of 1837-1838, Papineau had succeeded in expressing the democratic aspirations of an entire people, which brought him to power in 1834 with 95% of the vote, after 1845 he failed to regain the influence and the public that he had known before his exile. He withdrew to his Montebello manor on the north shore of the Ottawa River, where he died in 1871.

The introduction in 1791 of parliamentary democracy did not entirely fulfil the colony's expectations of Great Britain. The Constitutional Act, 1791 raised the promise that the Canadiens would ultimately enjoy all of the rights and freedoms of British subjects. Their loyalty to Britain should guarantee in return the liberal principles of British constitutional government that they believed they had inherited from Great Britain. However, the shortcomings of the Constitution of 1791 quickly became apparent. Indeed, it established a regime based on a shared monarchy. The governor of the colony, a sort of viceroy appointed by London, embodied executive power and the power of appointment. He appointed the Executive Council and the Legislative Council. The members of the government were in no way accountable to the lower house and constituted, in the eyes of the parliamentarians, an oligarchy that appointed its supporters to public positions and administered public funds beyond the control of Parliament.

While Louis-Joseph Papineau had admired the British Constitution and freedoms during the 1820s, around 1830 he began to doubt the relevance of the English model. London's refusal to make the Legislative Council elective and the governors' refusal to approve legislation confirming the Assembly's right to have a say in the executive branch and the twofold attempt made in 1811 and 1822 by

the English settlers to precipitate the union of the two Canadas convinced him to look to the United States, a prosperous young republic that was a continual source of fascination for him. At that time, his speeches took on a distinctly republican flavour. The most significant excerpts from his speeches from this period, unique in Québec's political history, are presented below. Papineau regarded the American republic as a model of public virtue and liberalism that the British constitutional monarchy, imperfectly transplanted to Lower Canada in 1791, had failed to offer the Canadiens.

These speeches were given between 1831 and 1834. They are remarkable in that Papineau outlines in them the promises and hopes spawned by the colony's various constitutional regimes, from the Royal Proclamation of 1763 to the Constitutional Act, 1791, along with the disappointment engendered by the regimes' shortcomings and national rivalries. Moreover, the excerpts reveal the attraction that American republicanism exercised on Papineau's thinking and which he regarded as the modern version of the republicanism of Rome and Ancient Greece.² Henceforth, American republican institutions more than the British monarchy, abandoned by the American revolutionaries, seemed best suited to guaranteeing Lower Canada, also a society in the New World characterized by the natural equality of social conditions, a genuinely constitutional government. Papineau's perception of the society of Lower Canada reflects Tocqueville's observations made in 1831: this society was also egalitarian in its mores and composition, lacking a hereditary aristocracy or great fortunes. Papineau drew from his observations a political conclusion: it would be absurd to attempt to introduce into this society monarchical institutions from the Old World when the social condition of the new colony demanded a democratic government in all respects capable of channelling the talents and energy of its citizens.

Following a period of oblivion, Louis-Joseph Papineau's political thinking has once again begun to interest historians.³

² On the modernity of American republicanism, see Denis Lacorne, *L'invention de la république. Le modèle américain*. Paris: Hachette, 1991, 319 pages.

³ See Louis-George Harvey, *Importing the Revolution: the Image of America in French Canadian Political Discourse 1805-1837*, doctoral thesis in history, University of Ottawa, 1990; Louis-George Harvey, "Le mouvement patriote comme projet de rupture (1805-1837)" in Gérard Bouchard and Yvan Lamonde, directors, *Québécois et Américains*. Montréal: Fides, 1995, pages 87-112; Yvan Lamonde, "Conscience coloniale et conscience internationale dans les

¹ Fernand Ouellet, *Papineau, textes choisis et présentés par Fernand Ouellet*. Québec: Les Presses universitaires Laval, 1959, 103 pages, p. 10.

Speech by Louis-Joseph Papineau in favour of the compensation of MPs (1831)

[...] Or, we may be able to explain the feelings of those opposed to this measure by assuming that they are harkening to the suggestions of pride, which assure them that the country has nothing better to offer. However, which members among us can assure that if the field had been freer and more open to competition, someone else would not have been elected? To allow an entire people to exercise its rights, you must also give it self-esteem, arouse a noble emulation, and give it freedom of choice. Why, in Lower Canada alone could we not give this facility to the people as has been done in the United States and all the other English colonies? The people would then demand that its representatives be accountable to it, depend on it and reflect its feelings. The voters would have a broader choice; society would have a right to demand the service of someone who warranted its trust but who would not have the financial means to accede to its request. [...]

In France, where the government is representative, the people's deputies, who may only be people with high incomes and where, to be a voter, one must dispose of a fortune, these deputies are nonetheless compensated for their services.

England must not be cited as an example, because there are colossal fortunes there and the buying and selling of seats that are unknown here. [...] It is neither in the mother country nor the rest of Europe, where the social organization is different, where wealth is very unequally distributed, that we must seek examples. Instead, we should look to the United States, where there are neither colossal fortunes nor degrading poverty and where a man of genius can rise through the social ranks unhindered. In this country, where we have neither a navy nor an army, in a word, where we see no patronage, we would nip the finest talents in the bud if we did not provide the means to those who are kindly disposed to sit in this chamber, although they have not been re-

écrits publics de Louis-Joseph Papineau (1815-1839)", *Revue d'histoire de l'Amérique française*, 51, 1991, pages 3-37; Yvan Lamonde, "Le lion, le coq et la fleur de lys : l'Angleterre et la France dans la culture politique du Québec (1760-1920)" in Gérard Bouchard and Yvan Lamonde, directors, *La nation dans tous ses états. Le Québec en comparaison*. Montréal/Paris: L'Harmattan, 1997, p. 161; Louis-Joseph Papineau, *Un demi-siècle de combats. Interventions publiques*, texts selected and presented by Yvan Lamonde and Claude Larin. Montréal: Fides, 1998, 662 pages.

warded by fortune. Seeing them young, gifted with brilliant ability, pure of heart, full of courage, we can imagine the greatest hope. The first need of a country is to encourage talent, foster a commendable emulation, and we must eagerly seize every opportunity that arises to achieve this end. We must not remain immobile next to the inhabitants of the neighbouring country, where the entire system is representative, where everything helps bring about emulation and develops industry. [...] [OUR TRANSLATION]

Speech by Louis-Joseph Papineau on the Legislative Council (1833)

[I have added the section titles.]

-I-

The Royal Proclamation of 1763

[...] From the time we became British subjects, it was an acquired right, a birth right and an imprescriptible right for us to have representation. Once we became British subjects, we received from this title "paying taxes", we owed to this responsibility more than to any act of parliament our inalienable right to enjoy the representative system. Once the Treaty of Paris confirmed the transfer of Canada, when there was not yet a Royal Charter nor an act of Parliament to introduce this system in the Province of Québec, General Murray published a Proclamation through which he invited the country to elect representatives. To have taken such a solemn, important step, he undoubtedly had directions from the Ministers. We cannot assume that he adopted this measure of his own volition. Undoubtedly, the example of another colony [Jamaica] was taken... Why did not the measure adopted by General Murray in 1764 have any subsequent effect? It was because of the system of exclusion directed against the French and the Canadiens and the Roman Catholics. Pernicious, narrow advice of a persecuting nature prevailed against us. This evil, which began at that time, still persists and, combined with this poor constitution, continues to weigh upon the country. The representatives elected were Canadiens and Catholic. Their religion, which for them in their country of origin never created any civil or political incapacity, deprived them of the introduction of the representative system of government... British municipal law struck persecuting, narrow minds as incompatible with the rights of people, with the international law of modern Europe. Honest, enlightened men would not have sparked this frivolous quibbling, this imaginary difficulty... It was an injustice and a major mistake to have left the country without a government. From 1763, when the

country was ceded, there was never, strictly speaking, a legitimate government, but a military regime, the empire of force, a country quartered in barracks. [...] [OUR TRANSLATION]

-II-

The Quebec Act (1774)

In 1774, everything that had been done previously was declared void. The Act revoked and annulled the proclamations, orders, commissions of public office-holders and for the first time England published statutes for us and we have a new and singular form of government. It also suspended the introduction of the representative system. It is neither necessary nor wise to return to the first principles and examine whether this new attempt at legislation was strictly legal. The province then submitted to this regime and it has ceased since. Whether or not there was encroachment in Britain, at least its intentions were not blameworthy. The first time that it legislated for Canada, it proclaimed in accordance with the rules of public law of modern times and Christian peoples... These principles were wise and true. However, the political system given to defend and protect them was insufficient. It gave no guarantee to the people that it could in any way repel the aggression of the governors and councillors who had become the masters of its fate when the people in no way participated in their appointment. With a new form of constitution, the people nonetheless continued to groan under the weight of injustice and oppression. This system was arbitrary and everything depended on the governor's character. However, the English government's excuse was that it knew little about the country, not much more than it does now. It had just published sound maxims. It should have added practice to theory and given us political institutions through which we could have repelled the aggressions attempted against our institutions. But the government omitted granting us the power to participate in the appointment of the Legislative Council. A governor sent here from outside the country, with no affection for it and no ties with its inhabitants, with the power to place and displace its creatures to make up the entire legislature, the entire administration, all of the courts of a country, could cause and perpetuate all of these glaring abuses. In the courts, men who had no knowledge of the laws were chosen by a contradiction in highly shocking terms, drawn from their counters to become the scourge of the province, the political judges. Since the period between 1774 and 1790, there was no tranquillity or happiness, or at best it was precarious in the province. Everything depended on the gover-

nor... All legislative, administrative and legal powers resided in the same hands... [...] [OUR TRANSLATION]

-III-

The Constitution of 1791 and the birth of representative government

As it progresses, political education necessitates reforms dreaded by those who have seized all powers. Indeed, there is a more limited step to be taken in order to extend today the principle of elections to all parts of the government than there was after such persistent refusals to seek the introduction. When this question was debated, the good subjects of the time were those who, as now, wanted to preserve the old order. Time demands changes. Who would now want to move backward and live again under the military regime that prevailed prior to 1774, under the organized despotism that followed it? Undoubtedly no one. Nonetheless, there were fewer complaints against the political schemes then prevailing than there are against those that now prevail. When we read the journals from that time of political ignorance, each of us lowers his head in shame, or raises his head with honest pride, depending on whether we see the names of our fathers recorded on the abject list of those who then supported the government established by a bad law, or on the glorious list of those who attacked or overthrew this vicious constitution, which today is universally condemned. To those who have undertaken the discussion at hand, I predict the same fate as for those who then supported the government established by a bad law. Immobile, lazy minds who refuse to trouble themselves in order to examine whether what exists is good or bad, who support everything that is established not because it is good but because they find it established, will see their children blush for them because of the vote they will cast today... Those who are the best disposed to overlook the abuses and patiently endure the abuses of today would certainly not want to go back in time and submit to the abuses then prevailing. They do not regret that our fathers insisted on the need for change. They do not exclaim that they were mistaken to grant changes in their constitution. To the contrary, we praise them: we rejoice that our fathers demanded the representative system. The objection was made that the population was not sufficiently enlightened to enjoy the use of such a system. Such is the eternal objection for all time, in all places, from those favoured by partial laws to the extent that, having seized all power and being glutted with all public wealth, they lapse into indolence and usually make mediocre men. Our fathers had to respond to these self-interested objections that it is not through vain

theories that men are trained for freedom but by forcing them to take part in public life. It is there that the study of politics is born... After lengthy and urgent representations, the country finally obtained the representative system. What are the advantages of this system, if not that the people will only obey its laws and will not relinquish one bit of its ownership without consenting to it through a law to whose passing it has contributed? It was thus, to some extent, in the time of Greece and Rome, where the majority of votes prevailed. However, since it was not possible to assemble an entire people in one place to give its decision, recourse to representatives was envisaged to replace it.

If we return to principles, what are the main considerations that caused this form of government to be adopted? What fundamental maxims does it sanction? No one is compelled to acquiesce to the law without having had the opportunity directly or through his representative to discuss the grounds for it. This means recognizing that if all of the people who form a State could conveniently be assembled in a single place, its separation to the right or the left would indicate where the majority lies, and the majority carries the law. Undoubtedly it would not choose from the minority the magistrate responsible for having faithfully executed its law, which he has just combated. The magistrate at all levels in the representative government must belong to the majority. This is the principle that invigorates all departments of the English government and the neglect of which fosters corruption in this province.

The political combination was sought that was believed to reveal the expression of the popular will that is the law. Representation that has no influence on the conduct of the government and the choice of its agents is nothing more than trickery against a people and a trap set for those who defend its rights.

Is there any analogy between the current state of the country and the maxims arising from the government? No. We have only a deceptive shadow of the English constitution. We have none of the advantages that must derive from it. [...]

-IV-

The Legislative Council

It is a question of natural right that half a million people situated as we are have a local legislature. It is part of positive English law that settlers shall enjoy a representative system everywhere, that such a system is practicable, that one of the essential

constituent parts of this legislature be a large, elective, frequently convened and frequently renewed assembly. It is not part of English positive law that in its other components it be shaped and modeled on that of Great Britain. In no other British colony, until the fatal attempt of 1791, had anyone thought of constituting any body whatsoever of persons appointed to public functions for life. No one ever dreamed of the existence of anything resembling the English aristocracy, because none of the colonies contained the elements, except a laughable attempt in Carolina, whose nobility lasted only three years although imagined by a man of wonderful genius [John Locke], but a European who was incapable of fully understanding the social state in North America. This system has not been established anywhere. By what chance was it to prevail in Canada alone? To find the response, we must go back in time and recount the circumstances that led to this error. Not only was a magistracy for life established here, but also officials tempted self-conceit by the offer and charms of a hereditary titled nobility. Canada, a country whose rigorous climate makes it poor and whose laws and values have always favoured the equal division of property, repels substitutions, condemns the privileges of primogeniture and should be the last country in which such an inept measure was attempted. It is unthinkable that those who had never offered titles so sought after by European vanity to wealthy planters in the southern colonies, to the rich merchants that the republican institutions of New England made so industrious and enlightened millionaires, lavish them on the poor provinces at a time when they were losing wealthy ones.

They were properly governed, prospered and at the first sign of discontent, separated. This was the natural result of the degree of strength that 2 million men had acquired. Britain's first injustice taught them that they were in a position to better govern themselves through their representatives than through their distant masters. Instead of learning moderation from such a telling lesson, England's pride was hurt. Stung by the loss of its colonies, it seems to fear the development and freedom of the remaining colonies and resorted to this system.

The collapse of the French monarchy heightened the fears of the privileged classes and an attempt was made to prevent ideas of freedom from prevailing in North America. Burke, the most eloquent writer of this period, abandoned the cause of freedom to become Pitt's inmate, frightened by the crimes that accompanied the French Revolution and forgetting that it was a monarchical education that trained the authors of these crimes, made himself the persuasive

champion of nobiliary privileges and for the first time introduced them into the English colonial regime...

The attempt to create a titled nobility might have been offered to those vain planters from the South. It is the result of chance, the combination of circumstances each and every one foreign to the state of the Province of Québec that has subjected it to these dire trials, these clumsy attempts at political novelty, which could not fail to make us the victims of the research conducted by the European Theorists on the best means of shackling for a long time the remaining colonies to the mother country, whether or not they were well or poorly governed. The bitter disappointment of losing other colonies, the horror of the English aristocracy at the sight of the collapse of the French monarchy and the shameful madness of fomenting dissension, which in the first years after the American revolution agitated a number of parties in the wake of the misfortunes that civil war always engenders, were the vile inspirations, which, I fear, had an influence in the writing of our constitutional act. How, indeed, can this isolated fact be explained, in the entire course of English colonial history, that prior to and since 1791 nothing analogous to our legislative council has been granted to any other British colony? The legislative council of tomorrow will be no better thought of than the legislative council of today. Do the authorities think they have sufficiently depraved the common sense of the country to make it believe that there is the slightest analogy between this council and the House of Lords? By calling an individual to the council, one does not give him any more respectability than he had prior to joining it... There are no sufficiently large fortunes here, historic names, illustrations of ancient recollections to confer on their possessors privileges, respect, esteem, a magistracy for life, which would be strengthened by public opinion and recognition. It is a bad law that is recorded in a book and is not registered in the hearts of the people.

Those who are tenaciously opposed to any change in the constitution and the composition of the council, on the pretext that to do so would be to go against the English constitution, are deluding themselves. It is they who like the innovations that have been designed and imagined for the Canadas alone. At the sight of the word *Convention*, they imagine that because it is possible that it sought to make everything elective, it would introduce an entirely new system that would only be harmful. It is because they have not attentively studied and are ignorant to a disgraceful extent of the history of the former colonies that they deem these proposals to be almost criminal. However, England must neither be surprised

nor offended if we tell it that in our mutual and reciprocal interest it must grant us as much freedom and as many privileges and exemptions as it has granted to the other colonies... The great fear of some individuals as regards the elective system arises because they imagine that everything is precarious and transient and that nothing is stable in the country where such a system prevails. Their assumptions are contradicted by the history of the colonies... [...]

-V-

The American model

Of all of these governments, those in which the regime has without a doubt produced the best results has been the pure or very slightly modified republicanism of the confederated New England states. It has produced on the habits of its inhabitants an improvement that, until now, is forthright and visible. All travellers are unanimous in agreeing when they tell you that they recognize everywhere in the southern or western states the genuine Yankee who has settled there and who, by virtue of his merit, usually succeeds in placing himself at the head of the management of public affairs, trade, universities, workshops and factories, through the superiority of activity, industry and education that he displays to all of his compatriots in the rest of the union. And as they are all of the same origin, such a strongly demarcated nuance can only be attributable to the difference in political institutions that govern them in the initial phases of their social existence. Such distinctions will soon disappear because of the similarity of the regime, at least in all of the states that have not been condemned to the irreparable misfortune of seeing domestic slavery persist. This is the main cause that has prevented ancient republicanism [Rome and Greece] to which Europe owes the superiority of its civilization over that of Asia, from producing for humanity such great and felicitous results as the modern republicanism of the Americans...

It is on the good government that is given to the country, not the extent of the patronage that the executive possesses and exercises, that must depend the strength and duration of our attachment to the mother country... A governor who is sent to a colony takes with him his prejudices and is accompanied by his favourites. These royal governors engaged in frequent struggles with the people when they sought to do what is being done here, i.e. dispose without authority of the taxes paid by the people. The repeated attempts never succeeded; the people always triumphed in the struggles in which they engaged and these colonies offer us lessons that are more often

than not instructive. They are models to be followed to enable us to resist the encroachment of our rights, by means of perseverance through the constitutional channels of a systematic resistance to any proposal to strengthen and concentrate power in the hands of a minority. [...]

-VI-

The need for democratic institutions

The reasons for our attachment to the mother country reside, first and foremost, in the powerful protection that it offers us from outside aggression and in the advantageous outlet it offers our products through mutually worthwhile trade. It is to this end that it must increase its colonial possessions, not to establish there aristocratic institutions if they are not satisfactory. What gives the most satisfaction to the people will attach it further to England. Our interests will coincide with our duties if we are properly governed...

In the colonies, the people must have democratic institutions because they are cheaper and less burdensome than more expensive ones. A new country needs robust men accustomed to work, sacrifices and economy to develop the forests. It is in the values, nature and common interest of the colony and the mother country that the institutions of government be economical, since everything that is removed from the enjoyment of luxury will endow new families who will marry younger, clear new land, create new productive capital that will buy useful manufactured products of woollen fabric and iron instead of silk and liqueurs...

Give institutions in which there will be no reason for adulation and national distinctions will cease. At present, the Government is reaping the fruits of its labour. It claims that it needs a council to defend a portion of the population that may not form a majority in the assembly. It needs a party in the House to support the Council. From one intrigue to the next, it had to make felt its direct action in the smallest details... This country's complaints against the vices of the constitution of the Council are too unanimous for it to be necessary to dwell further on the matter. The *Constitutional Act* gave the Council disastrous predominance that is allowing it to paralyse all of the Assembly's deliberations. The Assembly was intended to have influence, since the Province of Québec was divided so that the former population of Lower Canada could protect its own institutions. However, the constitutional act provided an easy means of destroying this hope: it meant bringing

Upper Canada to the Legislative Council of Lower Canada. And it has arrived... [...] [OUR TRANSLATION]

La Minerve, January 21, 1833, in Fernand Ouellet, *Papineau, textes choisis et présentés par Fernand Ouellet*. Québec: Les Presses universitaires Laval, 1959, pages 27-54, reproduced in Lamonde and Larin, *op. cit.*, pages 211-238.

The Ninety-Two Resolutions of the Legislative Assembly of Lower Canada (1834)

*All of the grievances and demands that more than 40 years of parliamentary struggles had engendered in Lower Canada, spawned by the conflict between a house of assembly without control over the colonial executive and what was then deemed an oligarchy of bureaucrats and aristocrats appointed to the governor's councils and in the colonial administration, suddenly exploded. On February 24, 1834, in a stormy, impassioned atmosphere, the Assembly of Lower Canada adopted by 56 votes to 23 a series of 92 resolutions. According to historian Guy Frégault, the resolutions can be perceived as the political summation of an entire era.*¹

The resolutions were written by Louis-Joseph Papineau, Elzéar Bédard and Augustin-Norbert Morin and submitted to the Assembly's agent in Westminster, Denis-Benjamin Viger, accompanied by a petition bearing some 80 000 names. Viger personally relayed the Assembly's grievances to the imperial Parliament, which gave them to Lord John Russell, secretary of state for the colonies. In March 1837, the House of Commons adopted 10 resolutions, the Russell Resolutions, which flatly rejected the February 1834 resolutions. The Ninety-Two Resolutions were not unanimously accepted by the Parti patriote. Their adoption provoked a split in the party between the revolutionaries, who were prepared to follow Papineau, and those who favoured the status quo, i.e. a more conciliatory attitude toward London. However, the resolutions formed the electoral platform of the Parti patriote, which achieved a veritable triumph in the October 1834 elections.

The Assembly broached its demands with a reminder of the loyalty of the people of Lower Canada toward England, who had remained faithful despite the appeal launched by the Americans in 1774 and in 1812. However, such loyalty was conditional

¹ Guy Frégault and Marcel Trudel, *Histoire du Canada par les textes*, Volume 1. Ottawa: Fides, 1963, p. 191.

since, as resolution 47 stipulates “[t]hat the fidelity of the People and the protection of the Government, are co-relative obligations, of which the one cannot long subsist without the other.” The resolutions mention several times that the English Constitution is not the only model to which the institutions in the colony should be compared. The institutions of the United States are also cited as an example, an especially appealing example in that the revolutionaries of 1834 saw a similarity between the social state of the “industrious, moral, and prosperous confederation of the United States of America” and that of Lower Canada, both without an aristocracy. The list of grievances drawn up by the Assembly was long: the absence of responsibility of ministers of the executive before the Assembly, usually chosen outside the Assembly; a Legislative Council that the Assembly preferred to have elected, and frequently; abuse and exclusion of and discrimination against the French-speaking majority of the people of Lower Canada that was entirely disinclined to relinquish its institutions, religion, language and customs and allow its French origins to become a reason for inferiority; the flagrant under-representation of this majority, i.e. 525 000 of 600 000 inhabitants in the colonial administration; corruption in the administration, the concentration of jobs among the governor’s supporters, the absence of separation of the executive and judicial branches; a scramble for the spoils of public lands; and a willingness by the provincial executive to remove from control by the Assembly a large portion of the province’s public revenue. In the latter case, it is important to understand that the imperial government had, in 1818, granted to the Assembly control over all of the province’s revenues. However, in return, the Assembly was bound, as was the case in England, to vote as a block and for the life of the sovereign a civil list to pay for the salaries of the governor’s senior public servants. The Assembly refused to accept any parity between the mother country and the colony and demanded supervisory power over all funds collected by the Province and refused on several occasions to vote on the civil list demanded by the governor, which the Assembly regarded as a pretext for favouritism and the misappropriation of funds.

On the whole, the most significant of the demands made in 1834 remains the right for the “People of the Province” to amend its own Constitution, which “cannot be altered, except at such time, and in such manner, as may be wished by the People of this Province, whose sentiments this House is alone competent to represent.” The Assembly likened this collective political freedom demanded for the people of Lower Canada to the national emancipation

movements in Europe, in keeping with the thinking of Liberals, Whigs, Reformers and Republicans whose “party covers all of America.” The influence of the European Enlightenment is also apparent, e.g. Montesquieu (the separation of powers) and Rousseau (the general will).

[I have added the section titles.]

Friday, 21st February 1834

Mr. Antoine Charles Taschereau, from the Committee of the whole House to take into consideration the State of the Province [...] reported [...] the Resolutions of the said Committee; which Resolutions were again read at the Clerk's Table, as followeth: [...]

2. *Resolved*, That the People of this Province have at all times manifested their confidence in His Majesty's Government, even under circumstances of the greatest difficulty, and when the Government of the Province has been administered by men who trampled under foot the rights and feelings dearest to British Subjects, and that these sentiments of the People of this Province remain unchanged. [...]

10. *Resolved*, That with the possession of a power so unlimited, the abuse of it is inseparably connected, and that it has always been so exercised in the selection of the Members of the Legislative Council of this Province, as to favor the spirit of monopoly and despotism in the Executive, Judicial and Administrative Departments of Government, and never in favor of the public interest. [...]

14. *Resolved*, That this House is no wise disposed to admit the excellence of the present Constitution of Canada, although His Majesty's Secretary of State for the Colonies has unseasonably and erroneously asserted that it has conferred on the two Canadas; [...] nor to reject the principle of extending the system of frequent elections much further than it is at present carried; and that this system ought especially to be extended to the Legislative Council, although it may be considered by the Colonial Secretary incompatible with the British Government, which he calls a Monarchical Government, or too analogous to the Institutions which the several States composing the industrious, moral, and prosperous confederation of the United States of America have adopted for themselves. [...]

21. *Resolved*, That the Legislative Council of this Province has never been any thing else but an impotent screen between the Governor and the People, which, by enabling the one to maintain a conflict with the other, has served to perpetuate a system of discord

and contention; that it has unceasingly acted with avowed hostility to the sentiments of the People as constitutionally expressed by the House of Assembly; that it is not right, under the name of a Legislative Council, to impose an Aristocracy on a Country which contains no natural materials for the composition of such a body; that the Parliament of the United Kingdom, in granting to His Majesty's Canadian Subjects the power of revising the Constitution under which they hold their dearest rights, would adopt a liberal policy, free from all considerations of former interests and of existing prejudices; and that by this measure, equally consistent with a wise and sound policy and with the most liberal and extended views, the Parliament of the United Kingdom would enter into a noble rivalry with the *United States of America*, would prevent His Majesty's subjects from seeing any thing to envy there, and would preserve a friendly intercourse between *Great Britain* and this Province, as her Colony, so long as the tie between us shall continue, and as her Ally whenever the course of events may change our relative position. [...]

28. *Resolved*, That even if the present Governor in Chief had, by making a more judicious selection, succeeded in quieting the alarm, and allaying for a time the profound discontent which then prevailed, *that* form of Government would not be less essentially vicious, which makes the happiness or misery of a country depend on an Executive over which the People of that country have no influence, and which has no permanent interest in the country, or in common with its Inhabitants; and that the extension of the Elective principle is the only measure which appears to this House to afford any prospect of equal and sufficient protection in future, to all the Inhabitants of the Province without distinction. [...]

32. *Resolved*, [...] shews clearly that the Provincial Executive and the Council of its choice, in league together against the Representative Body, do not, or *will* not consider it as the faithful interpreter and the equitable judge of the wants and wishes of the People, nor as fit to propose Laws conformable to the public will; and that under such circumstances, it would have been the duty of the Head of the Executive to appeal to the People, by dissolving the Provincial Parliament, had there been any analogy between the Institutions of *Great Britain* and those of this Province. [...]

37. *Resolved*, That the political world in *Europe*, is at this moment agitated by two great parties, who in different countries appear under the several names of Serviles, Royalists, Tories and Conservatives on the one side, and of Liberals, Constitutionals, Republicans, Whigs, Reformers, Radicals, and similar

appellations on the other; that the former party is, on this Continent, without any weight or influence, except what it derives from its European supporters, and from a trifling number of persons who become their dependents for the sake of personal gain, and of others who from age or habit cling to opinions which are not partaken by any numerous class; while the second party over-spreads all *America*; and that the Colonial Secretary is mistaken, if he believes that the exclusion of a few salaried Officers from the Legislative Council could suffice to make it harmonize with the wants, wishes and opinions of the People, as long as the Colonial Governors retain the power of preserving in it a majority of Members rendered servile by their antipathy to every liberal idea. [...]

39. *Resolved*, That the Legislative Council, representing merely the personal opinions of certain Members of a body so strongly accused, at a recent period, by the People of this Province, and so justly censured by the Report of the Committee of the House of Commons, is not an authority competent to demand alterations in the Constitutional Act of the thirty first *George* the Third, Chapter thirty one; and that the said Act ought not to be, and cannot be altered, except at such time, and in such manner, as may be wished by the People of this Province, whose sentiments this House is alone competent to represent; that no interference on the part of the British Legislature with the Laws and Constitution of this Province, which should not be founded on the wishes of the People, freely expressed either through this House, or in any other Constitutional manner, could in any wise tend to settle any of the difficulties which exist in this Province, but, on the contrary, would only aggravate them, and prolong their continuance. [...]

For a new Constitution

43. *Resolved*, That the Constitution and form of Government which would best suit this Colony, are not to be sought solely in the analogies offered by the Institutions of *Great Britain*, where the state of Society is altogether different from our own; and that it would be wise to turn to profit by the information to be gained by observing the effects produced by the different and infinitely varied Constitutions which the Kings and Parliament of *England* have granted to the several Plantations and Colonies in *America*, and by studying the way in which virtuous and enlightened men have modified such Colonial Institutions when it could be done with the assent of the parties interested. [...]

44. *Resolved*, That the unanimous consent with which all the American States have adopted and extended the Elective system, shews that it is adapted to the wishes, manners and social state of the Inhabitants of this Continent; [...]

47. *Resolved*, That the fidelity of the People and the protection of the Government, are co-relative obligations, of which the one cannot long subsist without the other; that by reason of the defects which exist in the Laws and Constitution of this Province, and of the manner in which those Laws and that Constitution have been administered, the People of this Province are not sufficiently protected in their lives, their property and their honor; and the long series of acts of injustice and oppression of which they have to complain, have increased with alarming rapidity in violence and in number, under the present Administration. [...]

Assertion of national rights

52. *Resolved*, That since a circumstance, which did not depend upon the choice of the majority of the People, their French origin and their use of the French language, has been made by the Colonial Authorities, a pretext for abuse, for exclusion, for political inferiority, for a separation of rights and interests, this House now appeals to the justice of His Majesty's Government and of Parliament, and to the honor of the People of *England*; that the majority of the Inhabitants of this Country are in no wise disposed to repudiate any one of the advantages they derive from their origin, and from their descent from the French Nation, which, with regard to the progress of which it has been the cause in civilization, in the sciences, in letters, and in the arts, has never been behind the British Nation, and is now the worthy rival of the latter in the advancement of the cause of liberty and of the science of government, from which this country derives the greatest portion of its Civil and Ecclesiastical Law, and of its Scholastic and Charitable Institutions, and of the religion, language, habits, manners and customs of the great majority of its Inhabitants. [...]

Control over public finances

64. *Resolved*, That the claims which have for many years been set up by the Executive Government, to that control over, and power of appropriating, a great portion of the Revenues levied in this Province, which belong of right to this House, are contrary to its rights and to the Constitution of the Country; and that with regard to the said claims, this House persists in the declarations it has heretofore made. [...]

65. *Resolved*, That [...] important heads of the Public Revenue of the Province, collected under the provisions of the Law, or under arbitrary regulations made by the Executive, have been omitted in the said Accounts; that numerous items have been paid out of the Public Revenue, without the authority of this House, or any acknowledgment of its control over them, as salaries for sinecure offices which are not recognised by this House, and even for other objects for which, after mature deliberation, it had not deemed it expedient to appropriate any portion of the Public Revenue; and that no Accounts of the sums so expended have been laid before this House.

66. *Resolved*, That the Executive Government has endeavoured, by means of the arbitrary regulations aforesaid, and particularly by the sale of the waste Lands of the Crown, and the Timber on the same, to create for itself, out of the Revenue which this House only has the right of appropriating, resources independent of the control of the Representatives of the People; and that the result has been a diminution of the wholesome influence which the People have constitutionally the right of exercising over the Administrative Branch of the Government, and over the spirit and tendency of its measures. [...]

70. *Resolved*, That since the last Session of the Provincial Parliament, the Governor in Chief of this Province, and the Members of the Executive Government, relying on the pretensions above mentioned, have, without any lawful authority, paid large sums of the Public Revenue subject to the control of this House; and that the said sums were divided according to their pleasure, and even in contradiction to the votes of this House as incorporated in the Supply Bill passed by it during the last Session, and rejected by the Legislative Council. [...]

Abuses in the public administration and justice

75. *Resolved*, That the number of the Inhabitants of the Country being about 600,000, those of French origin are about 525,000, and those of British or other origin 75,000; and that the establishment of the Civil Government of Lower Canada, for the year 1832, according to the yearly Returns made by the Provincial Administration, for the information of the British Parliament, contained the names of 157 Officers and others receiving Salaries, who are apparently of British or Foreign origin, and the names of 47 who are apparently natives of the Country, of French origin; that this statement does not exhibit the whole disproportion which exists in the distribution of the Public money and power, the latter class being for the most

part appointed to the inferior and less lucrative offices, and most frequently only obtaining even these by becoming the dependents of those who hold the higher and more lucrative offices; that the accumulation of many of the best paid and most influential, and at the same time incompatible offices in the same person, which is forbidden by the Laws and by sound policy, exists especially for the benefit of the former class; and that two-thirds of the persons included in the last Commission of the Peace issued in the Province, are apparently of British or Foreign origin, and one-third only of French origin. [...]

77. *Resolved*, That in consequence of their connection with the Members of the Provincial Administrations, and of their antipathy to the Country, some of the said Judges have, in violation of the Laws, attempted to abolish the use in the Courts of Law, of the language spoken by the majority of the Inhabitants of the Country, which is necessary to the free action of the Laws, and forms a portion of the usages guaranteed to them in the most solemn manner by the Law of Nations and by Statutes of the British Parliament. [...]

Powers demanded by the Assembly

79. *Resolved*, That this House, as representing the People of this Province, possesses of right, and has exercised within this Province, when occasion has required it, all the powers, privileges and immunities claimed and possessed by the Commons House of Parliament, in the United Kingdom of *Great Britain and Ireland*. [...]

Other grievances of the population of Lower Canada

84. *Resolved*, That besides the grievances and abuses before-mentioned, there exist in this Province a great number of others, (a part of which existed before the commencement of the present Administration, which has maintained them, and is the author of a portion of them,) with regard to which this House reserves to itself the right of complaining and demanding reparation, and the number of which is too great to allow of their being enumerated here: that this House points out as among that number: —

1st. The vicious composition and the irresponsibility of the Executive Council, the Members of which are at the same time Judges of the Court of Appeals; and the secrecy with which not only the functions, but even the names of the Members of that body have been kept from the knowledge of this House, when inquiries have instituted by it on the subject. [...]

Laying of charges against the Governor

86. *Resolved*, That this House hopes and believes that the independent Members of both Houses of the Parliament of the United Kingdom, will be disposed, both from inclination and a sense of duty, to support the accusations brought by this House, to watch over the preservation of its rights and privileges, which have been so frequently and violently attacked, more especially by the present Administration, and so to act, that the People of this Province may not be forced by oppression to regret their dependence on the British Empire, and to seek elsewhere a remedy for their afflictions. [...]

Journals of the House of Assembly of Lower Canada, 4th Session, 14th Parliament, 21st February 1834, Volume 43, pages 310-338.

The Durham Report (1840)

It may seem strange to include John George Lambton, also known as Lord Durham, among the founders of Québec democracy. From the outset, some would include him among those who combatted and diminished democracy. However, when we examine the changes that occurred in democracy in Lower Canada during the 19th century — Lower Canada lost its identity and autonomy under a legislative union after 1840 and regained them after 1867 under a quasi-federal regime — it must be acknowledged that Durham inspired it, whether we abhor his work or recognize that he had some merit.

Between the adoption of the Ninety-Two Resolutions in February 1834 and Lord Durham's arrival in Québec City in May 1838, a series of serious events altered the course of history. Political passions focused on resolutions in early 1834 became revolutionary. The Ninety-Two Resolutions had galvanized the Patriotes and part of the people, who honoured them with an electoral triumph. In the fall of 1835, London sent a commission of inquiry to Québec City in the hope of finding a solution to the political crisis in Lower Canada. Lord Gosford, the new governor of the colony, sought in vain to win over the Patriotes. The following fall, the members of the Assembly hurriedly ended their deliberations and refused to sit as long as London failed to follow up on the resolutions of 1834. Tension rose a notch when news of London's refusal to acquiesce spread throughout the colony. In March 1837, Westminster adopted the 10 Russell Resolutions, which denied the colony the right to elect the Legislative Council, the responsibility of the government, and withdrew from

the Assembly its power to refuse the adoption of the budget. Revolutionary fever then seized the colony. Public meetings proliferated and political societies were formed calling for a republic and the convening of a national convention. The bishops tried to dissuade the people from taking up arms. Journalist Étienne Parent, himself a moderate republican, exhorted them to stall for time. Battles occurred in November, then in December, between the Patriote rebels and British army troops. This army, which had defeated Napoleon, had no trouble putting down the insurgents, who were poorly armed and inexperienced and fled to the United States.

In February 1838, under the command of Robert Nelson, the Patriotes re-entered the country and returned home. In March, London suspended the Constitution of Lower Canada and entrusted the government to a special council. In May, Lord Durham disembarked in Québec City, vested by London with the title of governor general and high commissioner to British North America. Upon his arrival, he established 10 sub-committees and set about obtaining Washington's support against the insurgents. In June, Durham granted an amnesty, except to eight prisoners condemned to exile. The decision displeased the Colonial Office, which accused Durham of overstepping his mandate. General Colborne succeeded Durham and proclaimed martial law. Robert Nelson headed a second insurrection and proclaimed the independence of the republic of Canada, founded in principle on the separation of Church and State, the equality of citizens, civil and penal liberties, and universal suffrage. The insurrection failed and Colborne ordered massive arrests. The court martial imposed the death penalty on the insurgents. The execution of 12 of them and the deportation to Australia of 58 others marked the end of the revolutionary episode in Lower Canada. Lord Durham submitted his report to Westminster in February 1839 and died shortly after, in 1840, the year in which the Act of Union, which abolished the constitution of 1791 and reunited the two Canadas, was assented to in July.

In substance, Durham recommended in his report two measures intended to reestablish order in Lower Canada and Upper Canada, which was also troubled by insurrectionary fever under William Lyon Mackenzie (1795-1861). The first issue was ministerial responsibility, which London did not grant. This measure was called for, particularly in the English colonies, i.e. Upper Canada, Nova Scotia and New Brunswick, all three paralysed by the constitutional conflict between the governor and his executive and legislative councils, on the one hand, and the Assem-

bly, on the other hand. Next, a drastic measure, the assimilation pure and simple of the French-Canadian people through a legislative union in which it would ultimately lose, little by little, the traits of its national character and be supplanted in number by the British population. To establish ministerial responsibility in Lower Canada could not settle the conflict, as it would mean abandoning the power of a predominantly French-speaking assembly. According to Durham, it was a domestic conflict much more than a shortcoming on the part of the colonial government that explained the Patriote rebellion. In his report he wrote that he expected to find a conflict between a government and a people. Instead, he found "two nations warring in the bosom of a single state" and described the problems as racially, not politically, based. According to Durham, the French-Canadian people displayed an incorrigible inferiority that the Conquest of 1763 had excluded from any future in North America. They could only blend in with the grand imperial design for a liberal and loyalist British North America.

Many political players at the time criticized Durham for exaggerating the importance of the domestic conflict in Lower Canada. The issue is still being debated today.¹ The excerpts from the Durham Report that I have chosen emphasize instead the constitutional challenge that Durham had to take up. If Tocqueville travelled through the American republic and Lower Canada to write *Democracy in America*, it might be said that London dispatched Durham to reestablish the British monarchy in its North American colonies. It was not easy to transplant the King, the House of Lords and the House of Commons to the colonial territory in North America, and Durham saw the absurdity, as did the republican Patriotes, of wishing to replicate there the equivalent of the English aristocracy. An avid reader of Adam Smith, Durham was able to learn from the inability of the British Crown to keep the American colonies in the empire.² American and French luminaries had nurtured among the Patriotes the dream of an agrarian republic. Durham turned to the Scots luminaries to reestablish peace, order and good government under the empire of His Majesty.

¹ See J. Yvon Thériault, "Nation et démocratie au Québec : l'affaire Durham" in *Revue internationale d'études canadiennes*, 10, 1994, pages 15-27; David R. Cameron, "Lord Durham Then and Now" in *Journal of Canadian Studies*, 25, 1990, pages 5-23.

² See Stéphane Kelly, *La petite loterie. Comment la Couronne a obtenu la collaboration du Canada français après 1837*. Montréal: Boréal, 1997, 283 pages.

[...] The Assembly of which they thus complained, and of which they entertained apprehensions so serious, was at the same time in collision with the Executive Government. The party in power, and which, by means of the Legislative Council, kept the Assembly in check, gladly availed itself of the discontents of this powerful and energetic minority, offered it its protection, and undertook the furtherance of its views; and thus was cemented the singular alliance between the English population and the Colonial officials, who combined from perfectly different motives, and with perfectly different objects, against a common enemy. The English desired reform and liberal measures from the Assembly, which refused them, while it was urging other reforms and demanding other liberal measures from the Executive Government. The Assembly complained of the oppressive use of the power of the Executive; the English complained that they, a minority, suffered under the oppressive use to which power was turned by the French majority. [...]

The name of Mr. Papineau is still cherished by the people; and the idea is current that, at the appointed time, he will return, at the head of an immense army, and re-establish "La Nation Canadienne". [...]

Some vague expectation of absolute independence still seems to delude them. The national vanity, which is a remarkable ingredient in their character induces many to flatter themselves with the idea of a Canadian Republic; [...]

There are two modes by which a government may deal with a conquered territory. The first course open to it is that of respecting the rights and nationality of the actual occupants; of recognizing the existing laws, and preserving established institutions; of giving no encouragement to the influx of the conquering people, and, without attempting any change in the elements of the community, merely incorporating the Province under the general authority of the central Government. The second is that of treating the conquered territory as one open to the conquerors, of encouraging their influx, of regarding the conquered race as entirely subordinate, and of endeavouring as speedily and as rapidly as possible to assimilate the character and institutions of its new subjects to those of the great body of its empire. [...]

It is impossible to observe the great similarity of the constitutions established in all our North American Provinces, and the striking tendency of all to terminate in pretty nearly the same result, without entertaining a belief that some defect in the form of

government, and some erroneous principle of administration, have been common to all; the hostility of the races being palpably insufficient to account for all the evils which have affected Lower Canada, in as much as nearly the same results have been exhibited among the homogeneous population of the other provinces. It is but too evident that Lower Canada, or the two Canadas, have not alone exhibited repeated conflicts between the executive and the popular branches of the legislature. [...]

It may fairly be said, that the natural state of government in all these Colonies is that of collision between the executive and the representative body. In all of them the administration of public affairs is habitually confided to those who do not co-operate harmoniously with the popular branch of the legislature; and the Government is constantly proposing measures which the majority of the Assembly reject, and refusing its assent to bills which that body has passed.

A state of things, so different from the working of any successful experiment of representative government, appears to indicate a deviation from sound constitutional principles or practice. [...]

But, when we examine into the system of government in these colonies, it would almost seem as if the object of those by whom it was established had been the combining of apparently popular institutions with an utter absence of all efficient control of the people over their rulers. Representative assemblies were established on the basis of a very wide, and, in some cases, almost universal suffrage; [...]

At the same time the Crown almost entirely relied on its territorial resources, and on duties imposed by Imperial Acts, prior to the introduction of the representative system, for carrying on the government, without securing the assent of the representative body either to its policy or to the persons by whom that policy was to be administered.

It was not until some years after the commencement of the present century that the population of Lower Canada began to understand the representative system which had been extended to them, and that the Assembly evinced any inclination to make use of its powers. Immediately, however, upon its so doing, it found how limited those powers were, and entered upon a struggle to obtain the authority which analogy pointed out as inherent in a representative assembly. Its freedom of speech immediately brought it into collision with the Governor; and the practical working of the Assembly commenced by its principal

leaders being thrown into prison. In course of time, however, the Government was induced, by its necessities, to accept the Assembly's offer to raise an additional revenue by fresh taxes; and the Assembly thus acquired a certain control over the levying and appropriation of a portion of the public revenue. [...]

[...] ; it might refuse or pass laws, vote or withhold supplies, but it could exercise no influence on the nomination of a single servant of the Crown. The Executive Council, the law officers, and whatever heads of departments are known to the administrative system of the Province, were placed in power, without any regard to the wishes of the people or their representatives; nor indeed are there wanting instances in which a mere hostility to the majority of the Assembly elevated the most incompetent persons to posts of honour and trust. [...]

This entire separation of the legislative and executive powers of a State, is the natural error of governments desirous of being free from the check of representative institutions. Since the Revolution of 1688, the stability of the English constitution has been secured by that wise principle of our Government which has vested the direction of the national policy, and the distribution of patronage, in the leaders of the Parliamentary majority. [...]

The practice of carrying on a representative government on a different principle, seems to be the rock on which the continental imitations of the British Constitution have invariably split; [...]

But the Crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the Government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence. [...]

An elective executive council would not only be utterly inconsistent with monarchical government, but would really, under the nominal authority of the Crown, deprive the community of one of the great advantages of an hereditary monarchy. Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, [...]

I entertain no doubts as to the national character which must be given to Lower Canada; it must be that of the British Empire; that of the majority of the population of British America; that of the great race which must, in the lapse of no long period of time, be predominant over the whole North American

Continent. Without effecting the change so rapidly or so roughly as to shock the feelings and trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British Government to establish an English population, with English laws and language, in this Province, and to trust its government to none but a decidedly English legislature. [...]

Two kinds of union have been proposed, — federal and legislative. By the first, the separate legislature of each Province would be preserved in its present form, and retain almost all its present attributes of internal legislation; the federal legislature exercising no power, save in those matters of general concern, which may have been expressly ceded to it by the constituent Provinces. A legislative union would imply a complete incorporation of the Provinces included in it under one legislature, exercising universal and sole legislative authority over all of them, in exactly the same manner as the Parliament legislates alone for the whole of the British Isles. [...]

Time and the honest co-operation of the various parties, would be required to aid the action of a federal constitution; and time is not allowed, in the present state of Lower Canada, nor co-operation to be expected from a legislature, of which the majority shall represent its French inhabitants. I believe that tranquillity can only be restored by subjecting the Province to the vigorous rule of an English majority; and that the only efficacious government would be that formed by a legislative union. [...]

The union of the two Provinces would secure to Upper Canada the present great objects of its desire. All disputes as to the division or amount of the revenue would cease. The surplus revenue of Lower Canada would supply the deficiency of that part of the upper Province; [...]

While I believe that the establishment of a comprehensive system of Government, and of an effectual union between the different Provinces, would produce this important effect on the general feelings of their inhabitants, I am inclined to attach very great importance to the influence which it would have in giving greater scope and satisfaction to the legitimate ambition of the most active and prominent persons to be found in them. As long as personal ambition is inherent in human nature, and as long as the morality of every free and civilized community encourages its aspirations, it is one great business of a wise Government to provide for its legitimate development. If, as it is commonly asserted, the disorders of these Colonies have, in great measure, been fo-

mented by the influence of designing and ambitious individuals, this evil will best be remedied by allowing such a scope for the desires of such men as shall direct their ambition into the legitimate chance of furthering, and not of thwarting, their Government. By creating high prizes in a general and responsible Government, we shall immediately afford the means of pacifying the turbulent ambitions, and of employing in worthy and noble occupations the talents which now are only exerted to foment disorder. We must remove from these Colonies the cause to which the sagacity of Adam Smith traced the alienation of the Provinces which now form the United States: we must provide some scope for what he calls "the importance" of the leading men in the Colony, beyond what he forcibly terms the present "petty prizes of the paltry raffle of colonial faction". A general Legislative Union would elevate and gratify the hopes of able and aspiring men. They would no longer look with envy and wonder at the great arena of the bordering federation, but see the means of satisfying every legitimate ambition in the high offices of the Judicature and Executive Government of their own Union. [...]

The constitution of a second legislative body for the united Legislature, involves questions of very great difficulty. The present constitution of the Legislative Councils of these Provinces has always appeared to me inconsistent with sound principles, and little calculated to answer the purpose of placing the effective check which I consider necessary on the popular branch of the Legislature. The analogy which some persons have attempted to draw between the House of Lords and the Legislative Councils seems to me erroneous. The constitution of the House of Lords is consonant with the frame of English society; and as the creation of a precisely similar body in such a state of society as that of these Colonies is impossible, it has always appeared to me most unwise to attempt to supply its place by one which has no point of resemblance to it, except that of being a non-elective check on the elective branch of the Legislature. The attempt to invest a few persons, distinguished from their fellow-colonists neither by birth nor hereditary property, and often only transiently connected with the country, with such a power, seems only calculated to ensure jealousy and bad feelings in the first instance, and collision at last. I believe that when the necessity of relying, in Lower Canada, on the English character of the Legislative Council as a check on the national prejudices of a French Assembly shall be removed by the Union, few persons in the Colonies will be found disposed in favour of its present constitution. Indeed, the very fact of union will complicate the difficulties which have hitherto existed; because a satisfactory choice of councillors would have to be made with

reference to the varied interests of a much more numerous and extended community. [...]

Lord Durham's Report, Edited with an introduction by Sir C. P. Lucas, Volume II, Oxford, 1912, pages 51, 58, 63-64, 72-79, 278-279, 288-289, 304-313, 325-326.

The granting of responsible government (1847-1848)

Since 1791, the regime established by London in Lower Canada had been a colonial monarchy. Sovereignty was shared, on the one hand, by the governor, in whom was vested most power, administering the colony through his two councils, and an assembly with limited authority, and on the other hand, by the governor and the mother country, which oversaw his appointment and the colonial constitution. Under this regime, the government, i.e. the members of the Executive Council, appointed by the governor, were not members of the Assembly. Very early on, a conflict arose between the Assembly, made up of a majority of French Canadians, and the councils and the administration, dominated by the English minority that had settled recently in the colony.

The Patriote newspaper Le Canadien promptly denounced the inadequacy of the colonial regime and demanded the implementation of the principles of government found in the British Constitution. In 1809, Pierre Bédard, the newspaper's founder, published under the pseudonym Juvenis an article calling for ministerial responsibility, as a result of which Governor Craig prohibited the newspaper's publication in 1810. In Nova Scotia and in Upper Canada, elected representatives, like the republican Patriotes, fought to obtain ministerial responsibility. In his report, Lord Durham recognized that such a measure was called for in the colonies with an English majority.

The aborted revolution of 1837-1838 convinced London to proceed with the union of the two Canadas. In July 1840, Queen Victoria sanctioned the Act of Union, which united the two colonies in a single province. The Act recognized English as the only official language, imposed a single parliament with equal representation, although Lower Canada had 200 000 more inhabitants than Upper Canada, and amalgamated the debt and revenue of the two colonies, thus putting Lower Canada, which had less debt than Upper Canada, at a disadvantage. In June 1841, the 84 MPs from the Province of Canada convened in Kingston, the new capital of the colony. Moderate reformists, such as John Neilson, who had

hoped that the Union would favour responsible government, quickly lost their illusions. The government established a Legislative Council made up of 24 non-elected members, and an eight-member Executive Council, none of whose members were drawn from the Assembly or the French-Canadian community. Despite the bitterness of the disappointed reformists and the bitterness of the French-Canadian MPs who were opposed to the Union, which had deprived Lower Canada of its political freedom, alliances were concluded to persuade the colonial government to grant ministerial responsibility. Louis-Hippolyte La Fontaine and Robert Baldwin, the reformist leaders in Canada East (formerly Lower Canada) and Canada West (formerly Upper Canada), united their efforts to this end. Toward the end of the 1840s, it was possible for the colonial authorities to contemplate the granting of responsible government. As a result of massive immigration by British settlers to the province, the population of British origin formed an electoral majority. The population of French origin could not control an autonomous colonial government.

In 1847, London appointed Lord Elgin Governor General of Canada and directed him to let the colony govern itself. In his correspondence with the Colonial Office, Lord Elgin recognized that it was time to replace the “patronage” system prevailing in the province with a executive accountable to the local Parliament (excerpts from a dispatch sent by Lord Grey appear below). Responsible government was granted without ceremony or the proclamation of a new constitution, but in an understated manner. The elections in 1847-1848 gave La Fontaine’s and Baldwin’s reformists a majority. However, the Tory government in power did not resign immediately. Baldwin proposed a non-confidence motion whose adoption forced Henry Sherwood’s Tory Great Ministry to resign. In February 1848, Lord Elgin asked La Fontaine and Baldwin to form a new ministry. Throughout the Union, the colonial executive was two-headed, officiously representing Canada East and Canada West and the two national communities. However, the granting of responsible government did not put an end to patronage. La Fontaine was put in charge of appointments and pursued the practice, which he perceived as a means of ensuring the ascendancy of French Canadians in the colonial administration.

The advent of responsible government in Canada was presented as a conquest (Wilfrid Laurier’s speech of June 26, 1877 comes to mind), to some extent the revenge of a people dispossessed of its political freedom in 1763 and in 1840, which it

regained through responsible government. The course of events reveals, instead, that it was a concession granted by the colonial regime, one that would certainly last, but only once the political and linguistic balance in the province confirmed English predominance and the discrediting of the republicans, as witnessed by the disfavour into which Papineau was plunged upon his return to parliament in 1848 as the MP for Saint-Maurice.

[I]t is only of late that the popular assemblies in this part of the world have acquired the right of determining who shall govern them - of insisting, as we phrase it, that the administration of affairs shall be conducted by persons enjoying their confidence. It is not wonderful that a privilege of this kind should be exercised at first with some degree of recklessness, and that, while no great principles of policy are at stake, methods of a more questionable character for winning and retaining the confidence of these arbiters of destiny should be resorted to. My course in these circumstances, is, I think, clear and plain. It may be somewhat difficult to follow occasionally, but I feel no doubt as to the direction in which it lies. I give to my ministers all constitutional support, frankly and without reserve, and the benefit of the best advice that I can afford them in their difficulties. In return for this, I expect that they will, in so far as it is possible for them to do so, carry out my views for the maintenance of the connexion with Great Britain and the advancement of the interests of the province. On this tacit understanding we have acted together harmoniously up to this time, although I have never concealed from them that I intended to do nothing which may prevent me from working cordially with their opponents, if they are forced upon me. That ministries and oppositions should occasionally change places, is of the very essence of our constitutional system [...] In order, however, to secure these advantages, it is indispensable that the head of the Government should show that he has confidence in the loyalty of all the influential parties with which he has to deal, and that he should have no personal antipathies to prevent him from acting with leading men.

I feel very strongly that a Governor-General, by acting upon these views with tact and firmness, may hope to establish a moral influence in the province which will go far to compensate for the loss of power consequent on the surrender of patronage to a executive responsible to the local Parliament. Until, however, the functions of his office, under our amended colonial constitution, are more clearly defined — until that middle term which shall reconcile the faithful discharge of his responsibility to the Imperial Government and the province with the

maintenance of the quasi-monarchical relation in which he now stands towards the community over which he presides, be discovered and agreed upon, he must be content to tread along a path which is somewhat narrow and slippery, and to find that incessant watchfulness and some dexterity are requisite to prevent him from falling, on the one side into the *néant* of mock sovereignty, or on the other into the dirt and confusion of local factions.

Letter from Lord Elgin to Lord Grey (1847) in J.-Y. Morin and J. Woehrling, *Les constitutions du Canada et du Québec du régime français à nos jours*, Volume 2. Montréal: Éditions Thémis, 1994, page 123.

Debate on the federal union of 1867

In 1864, the Conservatives of Canada East, led by Georges-Étienne Cartier, and the Conservative and Reform parties of Canada West, headed by John A. Macdonald and George Brown, respectively, formed a broad coalition with a view to federating the colonies of British North America. There were several reasons for this project. It was essential to establish a more stable political regime than under the Union of 1840, characterized by instability and the frequency of government coalitions. With the anticipated abolition of the treaty of reciprocity with the United States, it seemed all the more urgent to create a common market between the English colonies, united by a railway system to be financed by the central government of the new union. In light of the external dangers posed by the American Civil War, the federal union appeared to be a means of establishing a strong army to defend the colonies.

In September 1864, delegates from the Province of Canada, the colonies of New Brunswick, Nova Scotia and Prince Edward Island convened in Charlottetown, Prince Edward Island, to confer on the proposed union. In October, another conference was held in Québec City, where the delegates adopted 72 resolutions that presented the broad outlines of a union, a compromise between the proponents of a unitary regime and those in favour of veritable federalism. In both Canadas, the proponents of the project presented it as a “confederation”, although, obviously, there was no question of instituting an international alliance between sovereign States.

In forming their coalition, the proponents of the new union had promised to consult the people. However, after the adoption of the Québec resolutions, Macdonald and Cartier were loath to submit the proposal to the people, since approval by the

local legislature would suffice. On February 6, 1865, Macdonald precipitated events: he proposed the adoption of an appeal to Her Majesty, asking her to table the proposal in the British Parliament. A lengthy debate ensued, which lasted until March 1865. On March 13, the House approved the project as such by 91 votes to 33. Among the MPs from Lower Canada, the vote on the project was 35 votes to 25. Among the representatives of the French-speaking ridings, the vote was 25 to 24.¹

In Lower Canada, the project divided public opinion. Opponents denounced the absence of public consultation and the inadequacy of the guarantees offered in respect of the autonomy of the Province of Québec, to which would be restored the Parliament lost in 1840. Anxious and divided, the upper Catholic clergy withdrew into total silence until the proclamation of the union in 1867. Opponents in Lower Canada, led by Liberal Radical Antoine-Aimé Dorion, attempted in the fall of 1866 a final protest by sending a petition to Lord Carnarvon, secretary of state for the colonies. The protest was futile, since in March 1867, the British sovereign proclaimed the British North America Act, establishing the Dominion of Canada, made up of four provincial States, Ontario, Québec, Nova Scotia and New Brunswick, and a federal government, which, in Macdonald’s words, should exercise all powers attached to sovereignty.

Debate sparked by the Great Coalition in 1864, which culminated in debate in the winter of 1865 in the Parliament of Canada, focused on all manner of considerations: the economic profits expected from an east-west common market and the development of the railroad, broader military protection, and the guarantees that French Canada would obtain concerning its language, religion and civil law. Debate also centred on the establishment of a constitutional monarchy, which the protagonists of the Great Coalition wanted to base on the British Constitution. The 72 resolutions of October 10, 1864 recognized the British sovereign as the holder of executive power in the union and the head of the armies. A governor general appointed by London would act as chief executive of the federal government. Each province would have at the head of its executive branch a lieutenant governor, appointed by the federal governor general. The federal government would dispose of extensive powers of appointment: aside from the lieutenant governors, it would appoint judges and federal senators.

¹ See Jacques Lacoursière, *Histoire populaire du Québec*, Volume III, 1841-1896. Sillery: Septentrion, 1996, p. 232.

Georges-Étienne Cartier (1814-1873), a former republican Patriote in his youth, revealed very candidly in a speech given in Montréal on October 29, 1864, the true objective of the new regime that had just been elaborated at the Québec City conference, i.e. to help the monarchical element to become even more deeply rooted in Canada. To the members of the Great Coalition, the example of the American republic had served as a foil and, in their view, the regime led to the tyranny of the masses. Popular opinion, represented in the lower House and beset by seditious passions, must be tempered by aristocratic counterweights, including the federal Senate, appointed by the federal executive, of which the representatives of the British monarch at the federal and provincial levels would be the instruments. The opponents of the new regime saw the matter differently. Antoine-Aimé Dorion (1818-1891), the leader of the Parti rouge, protested vehemently during the debate in the winter of 1865. He perceived in the new regime a monarchy that infringed unacceptably on the political freedoms of the people. The Legislative Council, whose members had been elected by the people since 1856, would become an instrument of the federal executive, which in turn would dispose of sweeping powers of appointment. According to Dorion, this would lead to nepotism. The people were not consulted on the project, either by referendum or through general elections. Given the limited guarantees provided in respect of the autonomy of the provincial States, Dorion believed that the union would ultimately degenerate into a unitary state.

In late August and early September 1867, elections were held to choose the MPs for the House of Commons and the newly created Québec Legislative Assembly. Cartier was elected to both assemblies and entered the federal cabinet formed by John A. Macdonald. Cartier was made a baronet in 1868 by Governor General Monk; he was defeated in the federal general election of 1872 and passed away the following year. Despite his opposition to Confederation, Dorion was elected to the House of Commons in 1867 and took over the Liberal Party at the federal and provincial levels. In 1873, he became Minister of Justice in the Liberal cabinet of Alexander Mackenzie and was appointed Chief Justice of the Québec Court of Queen's Bench in 1874.

**Speech by Georges-Étienne Cartier
on Confederation (1864)**

[...] We, in turn, are working at present to establish a great confederation here [he had just men-

tioned the establishment of the American republic], but our objective is not at all to do so by means of the creation of democratic institutions. No, instead, our objective is to help the monarchical element become more deeply rooted here.

[...] As for political matters, it is obvious that we have general interests that can be entrusted to a general government of all of British North America. As a resident of Lower Canada, I recognize that the union of Upper and Lower Canada has done a great deal of good. I admit, and I have said this on several occasions, that this union has had a marvellous effect on the prosperity of the two provinces and that this prosperity is now, in itself, worthy of England's and the entire world's attention. I am not one of those people who would like to see Upper and Lower Canada separated in such a way that each one has the right to set its tariffs independently of the other. If such a situation were to prevail, what would be the consequences? Montréal would be isolated. I, for one, do not hesitate to recognize that Montréal's prosperity is attributable more to Upper Canada than to Lower Canada. We must assess events as they are. I say to you, as one of your representatives has said, that I will never acquiesce to any proposal that would allow Upper and Lower Canada to adopt different policies governing tariffs and the country's trade. What do we see but a great party, formerly opposed to the union, defend it at present with all of its strength? Why? Because, and I repeat, the union has contributed a great deal to the prosperity of the two provinces. Given this result, should not a Canadian statesman devote his talents and energy to resolving the question of representation that threatens a breaking-off of relations between Upper and Lower Canada?

[...] We must proceed with the confederation of the British provinces, failing which we will fall into the American federation. [The listeners display their opposition to such a timetable.] I knew that you would respond thus and I am pleased with your protests. I know that the desire of everyone present is to complete this great national project, which will link to the same body all of the colonies' key interests and which make of us a veritable nation. I do not wish to claim that this nation will be distinct from the mother country. However, when I speak of forming a confederation, I mean that the powers granted by the imperial government to the different provinces will all be combined and entrusted to a single general government. If this is achieved, I will believe that I have participated in an excellent initiative. [...]

Under the authority of the new system about which I have spoken, Lower Canada will have its

local government and almost as much legislative power as previously. In Montréal and elsewhere, an attempt has been made to prejudice public opinion by suggesting that taxes would have to be raised to support a local government in Lower Canada. That is not so. Under the confederation, the general government will support the local government. Moreover, it will have revenue of at least \$1.5 million generated by its territorial resources and there is no reason to resort to direct tax if men are wise and prudent. I have stated that it is my opinion that this confederation should not be carried out if it eliminates or even weakens the link that attaches us to Great Britain. I am in favour of confederation because I think that the establishment of a general government would further strengthen this link, which all of us value. I believe that each of us is of the opinion that the new form of government must be likely to broaden the influence and prestige of monarchical principles in our political system in order to have a chance to succeed. [...] [OUR TRANSLATION]

Guy Frégault and Marcel Trudel, *Histoire du Canada par les textes*, Volume II. Montréal: Fides, 1963, pages 16-18.

Speech by Antoine-Aimé Dorion on the proposed confederation (1865)

Legislative Assembly
Thursday, February 16, 1865

In rising on this occasion to address the House on the important question submitted to us, I must say I do so with an unusual degree of embarrassment, not only on account of the importance of the subject of our deliberations, but also because I have to differ from many of those with whom I have been in the habit of acting ever since I first entered into political life. Yet, Mr. Speaker, when I consider the questions raised by the resolutions submitted by the Government, I find that whether they be purely political ones, such as the proposal to restrict the influence and control of the people over the Legislature of the country by substituting a Chamber nominated by the Crown for an Elective Legislative Council, or whether they are purely commercial in their character, such as that regarding the Intercolonial Railway, or the larger question of Confederation itself, I still hold the same views that I held, in common with others who have now changed their opinions, when the subjects were first mooted. [...]

[...] for it is not very long since the House, by an overwhelming majority, voted for the substitu-

tion of an elected for a nominated Upper Chamber. In fact, the nominated Chamber had fallen so low in public estimation — I do not say it was from the fault of the men who were there, but the fact is, nevertheless, as I state it — that it commanded no influence. There was even a difficulty in getting a quorum of it together. So a change became absolutely necessary, and up to the present moment the new system has worked well; the elected members are equal in every respect to the nominated ones, and it is just when we see an interest beginning to be felt in the proceedings of the Upper House that its Constitution is to be changed, to return back again to the one so recently condemned. Back again, did I say? [...]

But the new House for the Confederation is to be a perfectly independent body — these gentlemen are to be named for life — and there is to be no power to increase their number. How long will the system work without producing a collision between the two branches of the Legislature? [...]

We have seen constitutions like that of England adopted in many countries, and where there existed a nobility, such as in France in 1830, the second chamber was selected from this nobility. In Belgium, where the Constitution is almost a *fac-simile* of that of England, but where there are no aristocracy, they adopted the elective principle for the Upper House, and no where in the world is there a fixed number for it, unless it is also elective. It must be fresh in the memory of a great many members of this House how long the House of Lords resisted the popular demand for reform, and great difficulties were threatened. [...] There is not a man in the Liberal ranks who dare vote for such a proposition as this, that could go before his constituents and say, "I have taken away the influence and control of the people over the Upper Chamber, and I have created an entirely independent body, to be chosen by the present governments of the several provinces". But no, the Constitution is in the nature of a compact, a treaty, and cannot be changed. (Hear.) But, sir, the composition of the Legislative Council becomes of more importance when we consider that the governors of the local legislatures are to be appointed by the General Government, as well as the Legislative Council; their appointment is to be for five years, and they are not to be removed without cause. I will venture upon another prediction and say we shall find there will be no such thing as responsible government attached to the local legislatures. [...]

It is but natural that gentlemen with the views of honourable gentlemen opposite want to keep as much power as possible in the hands of the Gov-

ernment — that is the doctrine of the Conservative party everywhere — that is the line which distinguishes the tories from the whigs — the tories always want to give more power and influence to the people. The instincts of honorable gentlemen opposite, whether you take the Hon. Attorney General East or the Hon. Attorney General West, lead them to this — they think the hands of the Crown should be strengthened and the influence of the people, if possible, diminished — and this Constitution is a specimen of their handiwork, with a Governor-General appointed by the Crown; with local governors also, appointed by the Crown; with legislative councils, in the General Legislature, and in all the provinces, nominated by the Crown; we shall have the most illiberal Constitution ever heard of in any country where constitutional government prevails. (Hear.) The Speaker of the Legislative Council is also to be appointed by the Crown, this is another step backwards, and a little piece of patronage for the Government. We have heard in a speech lately delivered in Prince Edward Island or New Brunswick, I forget which, of the allurements offered to the delegates while here in the shape of prospective appointments as judges of the Court of Appeal, Speaker of the Legislative Council, and local governors — (hear, hear) — as one of the reasons assigned for the great unanimity which prevailed in the Conference. [...]

Honorable members from Lower Canada are made aware that the delegates all desired a legislative union, but it could not be accomplished at once. This Confederation is the first necessary step towards it. [...]

Perhaps the people of Upper Canada think a legislative union a most desirable thing. I can tell those gentlemen that the people of Lower Canada are attached to their institutions in a manner that defies any attempt to change them in that way. They will not change their religious institutions, their laws and their language, for any consideration whatever. A million of inhabitants may seem a small affair to the mind of a philosopher who sits down to write out a constitution. He may think it would be better that there should be but one religion, one language and one system of laws, and he goes to work to frame institutions that will bring all to that desirable state; but I can tell honorable gentlemen that the history of every country goes to show that not even by the power of the sword can such changes be accomplished. [...]

Sir, if a legislative union of the British American Provinces is attempted, there will be such an agitation in this portion of the province as was never witnessed before — you will see the whole peo-

ple of Lower Canada clinging together to resist by all legal and constitutional means, such an attempt at wresting from them those institutions that they now enjoy. They would go as a body to the Legislature, voting as one man, and caring for nothing else but for the protection of their beloved institutions and law, and making government all but impossible. [...]

Legislative Council
Friday, February 17, 1865

[...] Hon. Mr. Dorion — I enquired, in language as explicit as it was possible to use, of the Hon. Atty. Gen. West, whether the Government would submit a new Constitution for ratification by the Legislature, and he only replied that the Government would submit the whole matter to the Imperial Government, that is to say, the Address to be passed by this House, and an explanation of the present state of matters in view of the defeat of the scheme of Confederation in the Lower Provinces. He refused to say that the Government would come back to the House with the measure. [...]

What I wish to say is, that it is perfectly clear that the House will not be called upon to pronounce upon the new Constitution which is to be given to us, no matter what changes may be introduced into the resolutions on which we are now called upon to vote. [...] All that we can understand from the Government is, that they will press the adoption of the measure by this House, and that, if they can pass it, they will ask the Imperial Government to give us a Constitution based on these resolutions, and that this Constitution will be imposed on the country without either the House or the people being called upon to ratify it, even although it be altogether different from the resolutions now submitted to us. [...]

I say that the Federal Parliament will exercise sovereign power, in as much as it can always trespass upon the rights of the local governments without there being any authority to prevent it. What authority have you constituted which can come forward and say to the Federal Parliament — "You shall not do such and such a thing, you shall not legislate upon such and such a subject, because these matters are reserved to the local governments." There will be no such authority, and consequently it will have sovereign power, and can do all that it pleases, and may encroach upon all the rights and attributes of the local governments whenever it may think proper. We shall be — I speak as a Lower Canadian — we shall be at its mercy, because it may exercise its right of veto on all the legislation of the local parliaments, and there again we shall have no remedy. In case of difference

between the Federal power and the local governments, what authority will intervene for its settlement?. [...]

Hon. Atty. Gen. Cartier – The delegates understood the matter better than that. Neither the Imperial Government nor the General Government will interfere, but the courts of justice will decide all questions in relation to which there may be differences between the two powers. [...]

Hon. Mr. Dorion – [...] I repeat that I see no protection whatever for our interests, as Lower Canadians, in the constitution of the political and judicial powers, for the Federal Parliament can encroach upon our rights without any authority having the power to interfere, and then we shall have a Federal Court of Appeal in which we shall only be represented by one judge against six or seven of other origins. [...]

[...] There is another very serious objection to the Constitution of the Legislative Council. [...] But then the General Government will nominate the councillors, and we shall be in a great minority in the Executive Council. Another objection is that the nomination of the legislative councillors on the recommendation of the Executive Council of the General Government, and this offers no guarantee for the institutions of Lower Canada, because the predominating influence in that Council will not be that of the majority of Lower Canada. To offer an effectual guarantee, it would be necessary that they should be elected by the people, or, at all events, only appointed on the recommendation of the local governments. [...] I cannot consent to a change which is neither more nor less than a revolution, a political revolution it is true, but which does not the less, on that account, affect the rights and interests of a million of inhabitants, the descendants of the first settlers in America, of those who have given their names to the vast regions which they discovered, and whose careers have been rendered famous by so many heroic traits. (Hear, hear.) I am opposed to this Confederation in which the militia, the appointment of the judges, the administration of justice and our most important civil rights, will be under the control of a General Government the majority of which will be hostile to Lower Canada, of a General Government invested with the most ample powers, whilst the powers of the local government will be restricted, first, by the limitation of the powers delegated to it, by the veto reserved to the central authority, and further, by the concurrent jurisdiction of the general authority or government. [...] Everywhere this scheme has been protested against, and an appeal to the people demanded; and yet, in defiance of the expressed opinions of our constituents, we are

about to give them a Constitution, the effect of which will be to snatch from them the little influence which they still enjoy under the existing union. We are about, on their behalf, to surrender all the rights and privileges which are dearest to them, and that without consulting them. It would be madness – it would be more, it would be a crime. On these grounds, I shall oppose this scheme with all the power at my command, and insist that under any circumstances it shall be submitted to the people before its final adoption. [...]

Confederation, 3rd session, 8th Provincial Parliament of Canada, 1865, 16 and 17 February 1865, pages 245, 254-256, 263-269, 687, 688-690, and 694-695.

Speech by Wilfrid Laurier against the dual electoral mandate (1871)

For the celebrated authors of The Federalist, a collection of articles in which the founding fathers of the American republic expressed their political thinking, the invention of federalism appeared as a solution to the classical dilemma of establishing a republic in a large State. The dilemma lay in ascertaining how to establish the government of the people in a community that was too vast for the citizens to directly exercise power. It was solved through political representation. In a large State, the people would elect dismissible representatives who would govern on their behalf. Then, through federalism, the State would itself be divided into two orders of democracy, the federal State and the federated states (the latter would preserve power closest to the people). Thus, federalism instituted a system of competing democracies in a given State.¹

But what does competing mean? Does it mean that the people elect two distinct bodies of representatives or that the latter may be confused? The question arose in Québec shortly after the introduction of the federal union in 1867. The British North America Act did not indicate whether a member of Parliament could obtain a dual mandate from the voters and sit simultaneously in a provincial assembly and in the House of Commons. In the election of 1867, 19 provincial members from Québec also represented constituents in the House of Commons. In the election of 1871, 17 Québec members were still concurrently assuming a second mandate. The dual mandate was quickly prohibited in the other prov-

¹ See Nicolas Tenzer, *Philosophie politique*. Paris: Presses universitaires de France, 1994, page 441.

inces, in New Brunswick and Nova Scotia in 1867 and in Ontario in 1872. The federal Parliament prohibited MPs from assuming a dual electoral mandate in 1873.

In Québec, the dual electoral mandate had its detractors and its defenders. Debate was launched in 1868 at the first session of the bicameral Québec Parliament, which had a legislative assembly and a legislative council. Félix-Gabriel Marchand, who achieved distinction as a theoretician of provincial autonomy prior to the union of 1867, repeatedly reopened the debate until 1874 in the Legislative Assembly. He regarded the dual electoral mandate as being incompatible with a genuine federal system. The dual mandate curtailed the real autonomy of the provincial States since some of their MPs, instead of representing only the population of the State, were subject to the power of the central government. Without the unhampered freedom of action of these elected representatives in respect of the fields of jurisdiction that the Constitution vests in the provincial States, the federal regime becomes indistinguishable from a legislative union.² The dual electoral mandate's defenders invoked the prestige conferred by the concurrent holding of mandates, parliamentary efficiency and respect for the will of the voters.

It is perhaps Wilfrid Laurier (1841-1919), a member of the Québec Legislative Assembly from 1871 to 1874 before becoming a federal MP, then federal prime minister from 1896 to 1911, who best expressed the justification for prohibiting the dual electoral mandate. In November 1871, Félix-Gabriel Marchand submitted draft legislation on the dual electoral mandate that he had been sponsoring since 1868. On November 22, during second reading of the bill, Laurier made a speech that formulated what might be deemed a statement of the doctrine of provincial autonomy. Laurier emphasized the pivotal notion that federalism instituted two levels of government, each one sovereign in its areas of jurisdiction and independent of each other. The two levels represent distinct interests, which must not be confused. Laurier had a premonition that the "competition of democracies" created by federalism would cause friction and "complications" between the two levels of government. The dual electoral mandate would make the federal government judge and jury with respect to such conflicts, which would distort the matter of political representation.

The courts agreed with Laurier's perception of the federal system insofar as it superimposed two levels of sovereign, independent government. This "dualistic" conception of federalism would underpin the constitutional thinking of Québec governments throughout the 20th century. However, the House rejected the bill introduced on November 13, 1871 by a five-vote majority. Chauveau's Conservative government had made the bill a question of trust. However, in 1872, it gave in to pressure and had the Assembly adopt the Marchand bill, which the Legislative Council vetoed. Marchand was tenacious and once again submitted his proposal to the Assembly in 1874, when both houses finally approved it.

Québec Legislative Assembly
November 22, 1871

[...] A confederation is an array of States that have common interests but which nonetheless have, in relation to each other, distinct, separate local interests. As for their common interests and needs, the States have a common Legislature, the federal Legislature. In respect of all of their local interests, each one has a separate local Legislature. In their respective fields of jurisdiction, the local and federal Legislatures are sovereign and independent of each other. If the federal system is to exist otherwise than in name alone and in order for it to produce the desired results, the Legislatures must be independent of each other, not only in law but effectively. Above all, the local Legislature must be completely free of any control by the federal Legislature. If, directly or indirectly, the federal Legislature exercises the slightest control over the local legislature, what you have is no longer a federal union: what you have is a legislative union in a federal form. If you open the doors of this House to the members of the federal Legislature, you are concomitantly accepting control over this House by the members of the federal Legislature and, as I said, you destroy the federal union, of which, in truth, you maintain the form but not the substance.

By virtue of our being an independent State that is part of another independent State, we will maintain business relations with this State. Sir, such is the state of human affairs that wherever there are business relations, there will also be strains and conflicts of interest. We are no exception to the rule. The day will come when the Québec and federal governments will experience such conflicts of interest. Naturally, the federal Legislature will side with the federal government and the local Legislature will side with the local government. If, under the circumstances, you open the doors of this House to the members of the federal Legislature, are you not, as a

² See Marcel Hamelin, *Les premières années du parlementarisme québécois (1867-1878)*. Québec: Les Presses de l'Université Laval, 1974, pages 287-288.

result, introducing into this House an element necessarily hostile to the Province of Québec and which will necessarily take sides against it? [...] [OUR TRANSLATION]

Débats de l'Assemblée législative du Québec, 1871-1875, page 73.

Manifesto in favour of women's suffrage (1931)

The Constitutional Act, 1791 granted women the right to vote, which was remarkable for the time. The poll tax was fairly low, regardless of sex, and women landowners could vote in the same capacity as men. It is an attested fact that some women exercised their right to vote and participated in political life, although the mentality and the time tended to exclude them. However, some men seemed open to the notion of the political equality of the sexes, as witnessed by a petition signed in 1828, in which voters in Québec City contested an election, which their candidate lost, on the pretext that a woman was denied her right to vote. It should be noted that the custom of Paris, which then governed civil law in Lower Canada, recognized that wives enjoyed a separate legal existence, contrary to Common Law in force in Anglo-Saxon North America. In 1834, the Legislative Assembly of Lower Canada adopted electoral legislation containing a provision that withdrew the right of women to vote, which seems anomalous in relation to the legislation at the time. Louis-Joseph Papineau, a member of the Assembly, justified the measure by evoking a concern to spare women the coarseness and abuses accompanying electoral battles, which were then stormier. However, London denied the 1834 legislation, for reasons unrelated to the issue of women's suffrage. In 1849, the Parliament of the Province of Canada permanently abolished women's suffrage.

The suffragette movement was organized in Canada in the late 19th century. Women first won the vote in the western provinces in 1916 and the suffragettes' victories multiplied until 1919. Except in Québec and Prince Edward Island, women could vote in provincial elections and be elected to Parliament. Women received a partial right to vote in federal elections in 1917 and the full right in 1918.

In Québec, however, the suffragettes met with resistance from politicians and the clergy. Even eminent intellectuals such as Henri Bourassa, founder of *Le Devoir* and a staunch defender of Canada's political emancipation, denounced Québec

"feminists," who had succeeded in preserving the right to vote enjoyed by certain categories of women in municipal elections. In 1912, the Montreal Suffrage Association was established, followed by the *Comité provincial du suffrage féminin*, founded by Marie Gérin-Lajoie and Walter Lyman. In 1922, the suffragettes succeeded in meeting with Louis-Alexandre Taschereau, the Liberal premier at the time, who rejected their demands. Campaigns in favour of women's suffrage were revived in 1927 with the establishment by Idola Saint-Jean of the *Alliance canadienne pour le vote des femmes*. Another famous suffragette, Thérèse Casgrain, took charge in 1928 of the provincial committee, which in 1929 became the *Ligue des droits de la femme*. Mesdames Casgrain and Saint-Jean worked tirelessly to obtain from the Québec government recognition of the right to vote.¹

Below is the text of a speech by Idola Saint-Jean (1880-1945) broadcast on the radio in 1931, on the eve of the tabling of draft legislation intended to give women the vote. The speech is an exhortation to the members of the Québec Legislative Assembly. First, Ms. Saint-Jean appealed to the patriotic conscience of the MLAs. New France had been established by women who displayed admirable talent, energy and intelligence, working with men. Her arguments then became more philosophical and political. Why restrict the political rights of women when, in civil life, they were expected to act responsibly and their opinions would be highly useful to the governing of the State? She then listed numerous inequalities in Québec legislation that denied women access to certain professions or restricted their civil rights.

This exhortation did not have the anticipated effect. The Assembly rejected the legislation by a vote of 47 to 21. The bill resurfaced in 1932 and was once again defeated. It was not until the general election of 1939 that a change occurred. The Liberal Party leader Adélard Godbout promised during the campaign the retrocession of the right of women to vote. He defied Maurice Duplessis, the leader of the Union Nationale, and announced in 1940 that he would fulfil his promise, which he did in April 1940.² However, this restitution did not result in the immediate entry by women into Québec political life. It was only in December 1961 that Claire Kirkland-Casgrain became the first woman elected to the Québec

¹ For a more detailed account, see Micheline Dumont, Michèle Jean, Marie Lavigne and Jennifer Stoddart, *L'histoire des femmes au Québec depuis quatre siècles*. Montréal: Quinze, 1982, 521 pages.

² *Loi accordant aux femmes le droit de vote et d'éligibilité*, 4 Geo, VI, chapter 7.

*Legislative Assembly. In 1964, she became a minister in the government of Jean Lesage and had legislation that ended the legal incapacity of married women adopted by the Assembly.*³

Ladies and Gentlemen,

Tomorrow, the Legislature will examine for the fifth time draft legislation demanding women's suffrage in this province. The demand is fair and legitimate. If it is finally accepted, it will put Québec women on an equal footing with their sisters in the eight other provinces of Canada.

Québec women have worked hard from the outset. If we go back to the beginning of our history, we see women working ardently to carry out the admirable project of colonization.

In all spheres of social life, they have been the courageous companions of men, always at work, giving the best of themselves to build a country called upon to play a key role in the history of the world.

Tomorrow, when they are called upon to vote on whether or not we are to be allowed to participate in Québec's political life, may our legislators remember that in 1705 the first broadcloth factory in Canada was founded on the initiative of Madame de Repentigny. May they also remember the work of Marie Rollet, one of the country's first farmers, who imported the first plough into our country. Moreover, it was Jeanne Mance who was the municipal treasurer of Ville-Marie and who found the money necessary to bring here a regiment to defend the settlers against the disastrous attacks by the Iroquois. The founders of the first hospitals and the first schools, were not these women, whom we have the glory to call our ancestors, a minister of trade, ministers of public assistance, education and, I would go so far as to say, minister of finance, filling this position in such a way that they proved to be a match for many men because of their abilities from the standpoint of organization and economics?

No man who witnessed what pioneer women accomplished at the dawn of our history would have refused them access to parliament if one had existed at that time. These intelligent, wise women were consulted on all matters and because of the coopera-

tion between the men and women of that time we are now enjoying progress and development in our Canada.

Did we not possess until 1834 the right that we are now demanding? Was it not exercised with conscience and dignity? To convince ourselves of the scrupulous manner in which our grandmothers fulfilled their duties as voters, it is sufficient to remember the words spoken by Louis-Joseph Papineau's mother when she deposited her ballot: "I'm voting for my son Louis-Joseph Papineau, not because he is my son but because I believe he is qualified to represent with dignity our race." That is an intelligent, sound policy.

It strikes me, ladies and gentlemen, that we have not proved ourselves unworthy. Today, we are to be found in all fields of charity and work. Economic conditions have thrown us into industry, trade, education, in a word, into all spheres of activity. We must work in order to live, so, why are we condemned to only occupy subordinate positions? Why not allow us access to the professions and the parliaments where laws are made that affect women every bit as much as men? Why, I ask you, gentlemen, would we not contribute our qualities as educators when legislation on our schools is discussed? Why do mothers not have the right to vote when the House examines legislation concerning the welfare of children, families, and so on? Are not these problems that women will always understand better than men?

In all honesty, gentlemen, tell us, are there issues that your mothers, spouses and daughters cannot understand, even if they only have a limited education? Put aside your selfishness, which brings you less happiness than you seem to believe, and tell us if you would be satisfied if, one day, women were to declare themselves your supreme arbiter and undertook, as you have blissfully done for centuries, to fully dictate your line of conduct, making themselves the sole judge of your destiny. You would quite rightly protest against such a state of affairs, would you not? Well, take inspiration from the words of the supreme Master, "Do unto others as you would have others do unto you." Allow us to elect our legislators. We are responsible human beings, please treat us as such. If a woman is guilty of a crime, your laws punish her. It is not the husband who mounts the scaffold, it is the wife who atones for her misdemeanour. Does it not strike you as intensely unfair that, at the same time, the law stipulates that a good mother, a good wife does not have the right to conclude a transaction without first obtaining the signature of her husband, whether he is good or bad? Do you realize that, ac-

³ From that time on, participation by women in the political, social and professional life of Québec grew steadily. For a detailed account of this change, see *Gouvernement du Québec, Conseil du statut de la femme, Femmes et pouvoirs : la révolution tranquille*. Québec: Les publications du Québec, 1993, 98 pages.

according to your law, a mother separated from her husband and to whom the court has granted custody of her children does not even have the right to consent to their marriage, that such a right is reserved solely for the father, even if he is unworthy of the title? Are such laws worthy of a country that claims to be Christian?

Man's happiness, said the great Victor Hugo a long time ago, cannot be made up of the sufferings of women. Selfishness is the cause of all the ills besetting humanity. To contribute to establishing our society on a foundation of justice is the best way to work for its well-being.

Think of the great Christian truths, gentlemen of the Legislature, when tomorrow you are asked to give women access to the political domain and the right to free choice of employment, since the draft legislation concerning the admission of women to the Bar will be debated tomorrow.

Instead of treating us like dangerous rivals, let us become your companions in all spheres of activity. Be proud of our abilities and allow us to use our talents to serve our province. The national pride of all genuinely Canadian hearts must be flattered by the success of Canadian men and women. In 1914, McGill University granted the first law degree to a Canadian woman, Ms. Langstaff, who ranked first in criminal law and corporate law, the two most difficult subjects in the faculty. Last year, Marthe Pelland was first in the faculty of medicine at the Université de Montréal. Fortunately this profession is not closed to us. How many other courageous, brilliant women might I mention here? Had they been born in another province, these women could aspire to the highest positions, but Québec keeps them in a state of guardianship and does not allow them to contribute to society.

Think of all of these women, gentlemen, and may your vote tomorrow be a liberating one. In the interests of all men and women, generously open the door to the political and professional arena to women who will thus remain in public life, as they in private life, the worthy descendants of Jeanne Mance, Marguerite Bourgeoys, Madeleine de Verchères, and many others who have contributed to the development of our country. Since all women engaged in charitable work and the legions of women who are working are unanimous in demanding their political rights and their right to free choice of employment, do not assume any longer, gentlemen, responsibility for keeping them on the scrap heap of political life in their province, which they love, and to the well-being

of which they wish to devote themselves. [OUR TRANSLATION]

Idola Saint-Jean, "Discours radiodiffusé sous les auspices de l'Alliance canadienne pour le vote des femmes du Québec la veille de la présentation du projet de loi du suffrage féminin" in Michèle Jean, *Québécoises du 20^e siècle*. Montréal: Éditions du Jour, 1974, pages 221-224.

Royal Commission of Inquiry on Constitutional Problems (1956)

As we have seen, federalism instituted a system of competing democracies. The abolition of the dual electoral mandate made it possible to clarify one of the rules governing this competition: federal democracy and the democracies of the provinces would each have their own body of representatives. Moreover, federalism assumes that each order of government, which possesses only a portion of State sovereignty, acts within its areas of jurisdiction, as defined by the Constitution. Conflicts of interpretation are thus inevitable. If the federal Parliament and the provincial legislature both believe they are empowered to legislate in a given field, a legal conflict arises. Such a conflict can be resolved in various ways, i.e. by political means or through legal arbitration. The latter solution has gradually been gaining ground in Canada since 1880. The Privy Council in London, the colonial tribunal of last resort for disputes in Canada, elaborated over the years a series of rules of interpretation intended to resolve this type of conflict.¹

From 1867 to 1939, the Canadian courts and the Privy Council settled numerous jurisdictional disputes. However, the two levels of government practised, by and large, a liberal, scarcely interventionist policy. Instead, they confined themselves to their respective areas of jurisdiction and complied with the Privy Council's interpretations, which favoured a clear, impermeable division of governmental responsibilities. However, the dynamics of Canadian federalism changed during World War II. The war effort encouraged the federal government to mobilize the Canadian economy and to intervene in many

¹ See Privy Council decisions *Hodge v. The Queen*, (1883) 9 Appeal Cases 117; *Bank of Toronto v. Lambe*, (1887) 12 A.C. 575; *Liquidators of the Maritime Bank of Canada v. The Receiver General of New Brunswick*, (1892) A.C. 437. For a more general perspective, see André Tremblay, "Judicial Interpretation and the Canadian Constitution," (1991-1992), 1, *National Journal of Constitutional Law*, 163.

fields falling under provincial jurisdiction. In principle, such intervention was to be temporary. Once peace was restored, it was hoped that the bipartite pre-war federalism would return. However, the war convinced Ottawa of the benefits of a Keynesian national policy that would encompass the fields of the economy, social security, education and culture, regardless of the fields of jurisdiction established in the 1867 Constitution.

This policy aroused the ire of the government of Maurice Duplessis, founder of the Union Nationale, who first came to power in 1936. He was defeated by the Liberals under Adélard Godbout in 1939, then returned to power in 1944 and governed until his death in 1959. Throughout his career, he opposed, in the name of provincial autonomy, what he deemed to be the “centralizing assaults” of the federal government. In 1951, Ottawa decided to directly subsidize the universities, despite their being under the sole jurisdiction of the provinces, which are responsible for all facets of education. Duplessis denounced this intrusion and in 1953 ordered Québec universities to refuse federal grants. Provincial autonomy as Duplessis saw it was not confined to obstructing federal government policy. It also entailed demanding broader fiscal autonomy. Under the Constitution, the taxation powers of the provinces are limited to direct taxation, which includes, in particular, income tax and consumption taxes. However, since 1867, the provinces had not directly collected income tax.

It is against this backdrop that Duplessis established in February 1953 the Royal Commission of Inquiry on Constitutional Problems, chaired by Judge Thomas Tremblay.² Disturbed by the federal government’s determination to monopolize tax revenues, Duplessis was counting on the Commission’s deliberations to support his demands for the sharing of such revenues. He demanded that Ottawa grant Québec the necessary tax relief to enable it to levy its own income tax. During the Commission’s hearings, several provincial associations supported the idea of an income tax. That was all it took for the Duplessis government to adopt in early 1954 legislation establishing such a tax.

Instead of submitting its final report in the year following its creation, the Commission undertook instead a thorough study of Canadian federalism and “French-Canadian” society. To this end, it called

upon well-known experts and intellectuals at the time, criss-crossed Québec, and held public hearings before hundreds of Quebecers and associations, who sent in hundreds of briefs. In 1956, the Commission submitted a voluminous report, a sweeping study that reviewed the foundations and history of Canadian federalism and encouraged the Québec government to fulfil its key responsibilities by establishing, for example, a department of education. Frightened by the scope of the Tremblay Commission’s recommendations, Duplessis delayed its publication and dissemination. It was only after Duplessis’ death that the report received widespread attention. Prime Ministers Jean Lesage and Daniel Johnson, who governed Québec from 1960 to 1966 and from 1966 to 1968, respectively, used the report as a source of inspiration for several of the major reforms implemented during this time of social and political emancipation, dubbed the Quiet Revolution.

The excerpts from the report reproduced below are drawn from Chapter II of Volume II, undoubtedly the most philosophical chapter in the report, which presents federalism as a system of social organization. The authors of the Tremblay report did not deem federalism to be only a simple political system, but also a principle for the organization of society overall, one that favoured the decentralization of political and social tasks and respect for the founding communities. Whether relations between society and the State or between different levels of the State are being contemplated, one principle must predominate, i.e. subsidiarity. The Tremblay report defines it thus: with respect to lesser individuals and groups, any society must content itself with exercising an auxiliary, subsidiary role and, consequently, avoid doing in their stead what they are capable of doing for themselves.

The Tremblay report did not, of course, invent the notion of subsidiarity. The principle owes its intellectual roots to the social doctrine of the Catholic Church, a doctrine that imbues the entire report. Numerous other schools of thought influenced the report’s authors: French personalism, English socialism, and Swiss and German legal thinking. The report summarizes the spirit of the times.³

The Tremblay report’s conception of subsidiarity as it applied to federalism met with little response in Canada. In fact and in law, Canadian federalism is not designed in light of a subsidiary

² See René Durocher and Michèle Jean, “Duplessis et la Commission royal d’enquête sur les problèmes constitutionnels, 1953-1956,” *Revue historique de l’Amérique française*, 25, 3, 1971, pages 337-364.

³ Marc Chevrier, “La conception pluraliste et subsidiaire de l’État dans le rapport Tremblay de 1956 : entre l’utopie et la clairvoyance” in *Les Cahiers d’histoire du Québec au XX^e siècle*, 2, 1994, pages 45-57.

logic. It is the federal Parliament and not the provinces that exercises residual jurisdiction, i.e. jurisdiction over areas not stipulated in the Constitution, while in the logic of subsidiarity, it is the opposite that should prevail. The Canadian Constitution makes provision for numerous procedures for centralizing jurisdictions, but very few for decentralizing them, an imbalance that the Supreme Court has, overall, accented rather than attenuated through its interpretations since 1949. The principle of subsidiarity has fared best in Europe. In 1957, six European states established the European Economic Community, which became the European Union in 1992, one of whose treaties sanctions subsidiarity as a principle governing the division of responsibilities between the Union and the member States.

[...] It would certainly be a mistake to believe the study we propose to undertake is only an ideological digression which has nothing to do with constitutional problems, properly so called. On the contrary, we are now approaching the heart of the question. For it must be carefully noted that, if debate on the constitutional terrain has, in recent times, assumed such gravity, it is only because it reflected and translated a much deeper conflict in the ideological field. [...]

Moreover, juridical technique alone is powerless to resolve a conflict of ideas in effective and definitive fashion. For the real question which currently presents itself concerns the philosophy of man and society. What kind of man and what kind of society do we want? [...]

It would be an error to believe we are here expounding a completely new theory of federalism, whereas we are satisfied to recover the traditional notion of it, by widening and, particularly, by deepening it. What, then, after all is federalism? We have said it is the system of association as opposed to the system of singleness; it obtrudes itself each time we desire neither unity, destructive of individualities, nor independence, destructive of unity. It is thus a general formula, effective not only between states but in all fields of social life. Thus considered, it appears as a system which, in simultaneous reaction against unitarianism and individualism, proclaims association between individuals and between social groups as a central organizing principle of society.⁴ [...]

⁴ One of the Swiss authors who has best understood the spirit and veritable nature of federalism has written in this respect: "How is federalism defined? Every federation is, first and foremost, an association. Thus, association is the first principle of federalism. This principle possesses a value, a strength that surpasses the political federation

That is a truth of experience, noted by all the great social observers, since Aristotle, for whom man was "a naturally Political animal", to Harold J. Laski, who defined him as "a community-building animal".⁵ Human society thus definitely appears as an immense network made up of a multitude of diverse associations, each of them encompassing man in a certain aspect as, for example, as a father or as a worker, as a sportsman, a believer, etc.. etc. [...]

As for federalism, it stems from social life as it exists and admits it in all its variety and complexity. Its purpose is not to enslave but to co-ordinate; it does not seek to unify but to unite. Nothing is more foreign to it than abstract simplifications and oppressive unifications. It does not intend to sacrifice, by organizing it, any human portion but it seeks to conserve for social life its freedom and vitality. Because it rests entirely on the principle of association, and because it sees society as a vast network of associations, it can only oppose any single dictatorship, even that of the state, and it can only claim for the various groups the right to expand while putting a pluralism respectful of man and of life at the base of its social organization. [...]

The Idea of the Common Good

[...] As for federalism, on the contrary, each community and each society has its own common good which is the source of its rights and of its duties. Instead of making everything depend on the will of the state alone, it wants to make everything flow from the search for the common good pursued by each group; which is to say that it finds right, not solely on the state, but on the social requirements of human nature itself. [...]

The Principle of the Subsidiary Function of all Collectivities

To complete its basic doctrine, federalism finally puts forward an organizational principle which tends to decide between activities and responsibilities

between small States, between cities, to become a conception of social life and, consequently, of man himself. This conception expresses itself in practical terms thus: wherever the intervention of the State is not absolutely necessary, substitute for a statist regime the association. [...] Federalism is a social principle. It is a social principle before it is a political principle. Protect, harmonize and develop social life: that is its reason for being and ultimate purpose." (Gonzague de Reynold, *Conscience de la Suisse*, pages 106, 110).

⁵ Harold J. Laski: *Grammar of Politics*, Paris, 1933, page 7.

in the functioning of social life.⁶ This principle might, in a general way, be enunciated as follows: with respect to individuals and lower groups, every collectivity must be satisfied to exercise a supplementary and subsidiary function, abstaining, consequently, from doing in their stead what they are able to do for themselves. [...]

[...] If it is desired to conserve the diversity and complexity of social life and the pluralist character of the common good, the right of inferior or intermediate groups not only to existence but also to action must be recognized; each must be granted its fair share of activity and responsibility in the functioning of social life, so that, definitively, man may assume his responsibilities at all levels and educate himself to living as a social and political being, which he could not do if the higher collectivity substituted itself for the lower collectivities in the fulfilment of their task.⁷

That is what must be understood by the principle of “subsidiarity”, a principle which *L'Institut international des Sciences sociales et politiques* precisely enunciated in its declaration on federalism in these two propositions: “All needs which can be met by individuals, family or associations, local or professional, should be left to these to satisfy, acting either alone, or in voluntary collaboration. In all cases, the higher authority should limit its activities to those matters with which the lower are incapable of dealing.”⁸

If this principle enjoys such importance today, it is because the state, through its repeated meddlings in the social domain and through its claims to a monopoly of the common good and of social functions, is in the process of killing men's personal lives, their initiative, their sense of responsibilities and, in fact, everything which represents spiritual expansion. We shall have occasion to revert to the role thus enacted by the state.

Against this ruinous interference and in order to remedy any such hypertrophy of state functions, federalism asks that the principle of subsidiarity be

applied to the entire social order. Its special formula might very well be thus stated: Wherever the system of association between individuals or groups suffices for the accomplishment of a certain task, it must be preferred to direct state intervention.⁹

Definitively, what federalism, supported on the four bases we have just described, aims to establish is a social and political order which will be human, an order made in the image of man, to the measure of man and for man, and consequently penetrated and animated at all stages by the life of the spirit, that spirit which is first and foremost conscience, liberty, responsibility, self-decision and self-government. [...]

The Pluralist and Decentralized Organization of the Political Order

As soon as there is a claim to apply federalism to the political order, this first consequence imposes itself automatically, in the sense that the system's living sources — the Christian concept of man, the fact of the complexity of social life, the idea of the common good, the principle of subsidiarity — all call for a pluralist and decentralized organization, even in the political order.¹⁰

The same reasons previously given with respect to the social order here retain all their force. A human order, especially in the political sphere, must be in the image and to the measure of man and must be established by and for man. We say that this is especially true in the political sphere because politics has the common good of humanity for its precise object, the good of man as man, that is to say, in the final analysis, life in conformity with reason.¹¹ Now federalism, in proposing a pluralist and decentralized organization, tends to establish a more human order than that of any other system, and certainly more human than the centralized and monist orders that most states know these days.

⁶ Cf. J. Messner, *Social Ethics*, Book I, Part III, No. 47, “The Ordering Power. The Principle of Subsidiary Functions,” *op. cit.*, pages 196-200.

⁷ (Trans.) “There is more perfection in a whole whose parts are full of life and initiative than in a whole whose parts are only instruments traversed by the initiative of the community's higher organizations.” (Yves Simon, “Notes sur le fédéralisme proudhonien”, *Esprit*, April 1, 1937, p. 63).

⁸ See, in this regard, the Swiss review *Politeia*, Volume I, fasc. 1, 1948-49, p. 70.

⁹ “According to the pluralist principle everything in the body politic which can be brought about by particular organs or societies inferior in degree to the State and born out of the free initiative of the people should be brought about by those particular organs or societies.” Jacques Maritain, *Man and the State*, Paris, 1953, page 61.

¹⁰ Cf. J. Messner, *Social Ethics*, Book III, Part 1, No. 120, “The State Political Pluralism”, pages 487-490.

¹¹ See, in this connection, appendix 1: Charles de Koninck, *La Confédération, rempart contre le Grand Etat*, pages 12-16, and particularly the citations from Aristotle concerning political society and the good life.

This order is more human, primarily, because it denies none of the works of man, that “political animal” and “community builder,” but integrates them all while leaving to them vitality and initiative. It seeks to have the greatest possible number of communities and societies participate in political life; it is a pluralist and living order which builds itself from the ground upwards, erecting its tiers according to the idea of the common good and the principle of subsidiarity. [...]

But the human character of federalism springs especially from the fact that it specifically aims at liberating and evoking the human from its members by a constant appeal to their initiative and their responsibility, providing to each of them the occasion and the means of realizing his social nature and of exercising his natural right to political life through free and active participation in the formation and preservation of the political organism at all levels. What it seeks to assure is this: an organism, of which all the parts should be full of life and self-operating, and not a mechanism with an all-powerful central mainspring. [...]

It would be necessary to start with the clear understanding that the centralized state cannot be an acceptable solution. [...]

The centralized Big State is not an acceptable solution because it allows its subjects to live only on the condition that they renounce the good life, that is to say, the life of the citizen, since the state transforms public functions¹² into simple administrative functions, because it only offers a remote and abstract common good, beyond the reach of common mortals.¹³

To this threat, which causes centralized statism to hover above society, there is a natural antidote — federalism, understood not only as a juridical and political regime, but also in the sense of a general system for organizing society. Still, there must be the will to make use of it. But its use lies in the very fact

of refusing to accede to the taste for facility by accepting the effort and risk accompanying freedom, and it is by seeking for oneself the accomplishment of one's destiny instead of having recourse to automatisms or techniques. [...]

Argument of a Social Order: A Canadian Social Security Programme

[...] Federalism, we said at that time, puts forward a principle which may be thus stated: as regards individuals and lower groupings, every community should content itself with exercising a suppletory and subsidiary function and refrain from doing for them whatever they are able to do for themselves, either individually or in association.

This principle of federalism wholly corresponds to the concept which the French-Catholic population of Quebec has of the state and of the state's role. That population, while it may be said to be generally in favour of state intervention in social and economic life, cannot, however, accommodate itself to every kind and degree of intervention. Particularly as regards social security, it is far from being able to accept with the same unanimity and with the same enthusiasm as the rest of the country the forms adopted ever since the federal government engaged itself in this field. [...]

Royal Commission of Inquiry on Constitutional Problems, 1956, Volume II, pages 111-125, 312-313.

¹² Quoted by Charles de Koninck, pages 26-30.

¹³ (Trans.) “From the moment we speak of the common good of political society it must be a good “operable” by ourselves, a good to be realized through our own activity... It must have the necessary attraction, known in a practical manner, so that it may influence us effectively to action... If the common good is that of a very large number and extends equally to all, and is thus too remote from the good which naturally and primarily attracts us, it becomes abstract, everybody's business yet no one's business. After which, only violence can impel action with such a confused and remote good in view.” (Charles de Koninck, *op. cit.*, pages 3-25).

Contemporary Legislative Texts

Introduction

The first part of this study focuses on debate and speeches that have marked the history of Québec democracy. A reading of these texts reveals the obstacles that democracy encountered along the way and the ideas that inspired those who created it. The second part assembles legislative texts from contemporary Québec, a reflection of what it, and democracy, have become, as seen through legislation. Québec does not have a formal written constitution that coherently combines the rules of the federation's constitutional laws and those of its internal constitution. The latter is made up, among other things, of a multitude of statutes adopted by the National Assembly that protect the rights of individuals and groups, and statutes that organize the Québec State and provide a framework for the electoral process.¹ The choice of the contemporary Québec legislative texts that follow has no official or definitive value. It is intended solely to provide an overview, albeit a fragmentary one, of the scope of the legislative protection accorded individual and civil rights and the rules and principles governing Québec democracy. Obviously, to ascertain the full scope of these provisions, the reader is encouraged to examine the full, official version of the statutes.

One essential choice among the texts is excerpts from the *Charter of human rights and freedoms* adopted by the National Assembly in 1975 (see *infra* parliamentary debate on the issue). Aside from traditional individual freedoms such as freedom of expression, religion and assembly, the Québec Charter includes a number of other rights, such as respect for professional secrecy and the duty of every individual to come to the aid of someone whose life is endangered. The Charter dwells on the individual's rights in relation to the State and also covers the entire range of private relations. Consequently, numerous provisions prohibit discrimination in labour relations, in public places and establishments, and in the signing of contracts. Other rights, such as economic and social rights (sections 38-48), are recognized in other legislation. The list of civil, political and social rights enshrined by the National Assembly could not be confined to the Charter alone.

¹ See Jacques-Yvan Morin and José Woehrling, *Les constitutions du Canada et du Québec du régime français à nos jours*. Montréal: Éditions Thémis, 1994, Volume I, pages 141-145.

Other statutes, such as the *Civil Code of Québec*, which underpins Québec civil law, based on French law, round out, clarify and broaden the 1975 Charter. The new *Civil Code of Québec*, which replaced, in 1991, the *Civil Code of Lower Canada*, in force since 1866, contains an array of civil rights, such as the individual's right to life, to the inviolability and integrity of his person, and respect for his name, reputation and privacy. Through other statutes, Québec legislators protect the confidential nature of personal information and consumer rights.

A series of statutes of a social nature, through which the Québec State ensures certain essential public services, such as education, health and youth protection, clarify the scope of social rights and provide an institutional framework. For example, the initial sections of the *Act respecting health services and social services* contain a mini-code of rights in respect of the users of Québec health services. A legislative framework also applies to the right to information and the quality of the environment.

Quebecers now account for one-quarter of the population of Canada. While French-speakers are in a minority in Canada and represent just under 25% of the total population, they are nonetheless in the majority in Québec. The National Assembly accords English-speakers and Native peoples numerous rights and services. Since 1867, Québec has had to guarantee the use of French and English in its parliamentary institutions and law courts and bilingualism in its legislation. The *Charter of the French language* reflects Québec's constitutional obligations in this respect. It also makes provision for access to instruction in English in public schools funded by the Québec government and managed by English-language school boards that the *Education Act* established. Legislation specifically accords several Québec Native communities the right to provide education in their language, through their own school boards. The *Act respecting health services and social services* makes provision for English-speaking Quebecers to obtain health and social services provided by the Québec government.

This overview of individual freedoms and the social obligations of the State demands an examination of the most significant rules and principles governing Québec's political and administrative institutions. The preamble of the *Act respecting the National Assembly* outlines the most basic of these rules and principles. The legislation contains a number of organic rules that specify the composition of the Québec Parliament, its functions, the power of dissolution and convocation of the head of the execu-

tive branch, the duration of the sessions of the legislature, and the independence of MNAs. The *Election Act* dwells on the electoral process. Québec has adopted the first-past-the-post system, overseen by a senior, independent public servant appointed by the National Assembly, i.e. the Chief Electoral Officer of Québec. Several excerpts from the *Election Act* are presented concerning the qualification of voters, the division of the electoral map, and the principles governing the delineation of an electoral riding. In addition to the institutions and procedures pertaining to representative democracy, mention should be made of those that concern direct democracy. The *Referendum Act* sets forth the conditions under which the government may consult the public by means of a referendum and the electoral framework for such a consultation. The municipalities also resort to referendums, as stipulated in the *Act respecting elections and referendums in municipalities*.

Since Québec is a constitutional monarchy, the lieutenant-governor, appointed by the federal Cabinet, is officially the head of the Québec executive branch. He formally exercises all prerogatives and powers vested in the representatives of the British Crown in Canada. The prerogatives and powers conferred by the Canadian Constitution on the lieutenant-governors are also conferred on the lieutenant-governor of Québec, as stipulated in the *Executive Power Act*. However, the prime minister, who is the leader of the majority party in the National Assembly, is the true head of the executive branch. He acts *ex officio* as the president of Conseil exécutif, which is part of its own department, the ministère du Conseil exécutif, administered by a secretary general, who is the most senior public servant in the Québec government. A minister for Canadian intergovernmental affairs assists the prime minister and ensures respect for Québec's constitutional jurisdiction.

Since the 1990s, the Québec government has played a key role in the delivery and conception of public services. The *Public Service Act*, under which Québec has established a modern, independent public service, stipulates the latter's role and indicates the objectives it must pursue, along with the general duties of public servants. The entire machinery of government is bound to act fairly toward the public. The violation of this obligation as a result of a decision by the government gives rise to the right of appeal before the administrative jurisdiction (see the *Act respecting administrative justice*). Aside from the courts, other independent institutions that report to the National Assembly monitor the government, i.e. the Public Protector, the Québec equivalent of the Swedish ombudsman, and the Auditor General, who audits

the public accounts. Under a parliamentary system such as that in Québec, Canada as a whole and Great Britain, municipalities and cities are offshoots of Parliament. A body of statutes, such as the *Municipal Code of Québec* and the *Cities and Towns Act*, regulate all facets of the municipal system in Québec.

A political community does not exist solely by virtue of its electoral procedures, institutions and laws. A culture of law must also flourish, along with a sense among individual citizens of their civic and social responsibilities. This leads to the notion of citizenship inherent in the new *Act respecting the ministère des Relations avec les citoyens et de l'Immigration*, which empowers the minister responsible for the statute's administration to promote values that foster a feeling of belonging to the Québec people.² Such a sense of belonging focuses on symbols, and celebrations and places emphasize it. The Québec government has made the fleurdelisé flag the official Québec flag, declared June 24, St. John the Baptist Day, the National Holiday, and made Québec City the national capital of Québec.

The Canadian Constitution confers on Québec and the other provinces exclusive or shared legislative jurisdiction over various institutions and spheres of activity. The areas of jurisdiction are outlined in sections 92 to 95 of *The Constitution Act, 1867*. The French version of this statute still has no official value, contrary to the English version, in force since 1867. In the *Constitution Act, 1982*, which the federal and nine provincial governments had adopted by the Parliament of Westminster despite Québec's opposition, the federal justice minister committed himself to have a French version of the 1867 statute prepared, although he has still not done so to date.

Charter of human rights and freedoms

Preamble

Whereas every human being possesses intrinsic rights and freedoms designed to ensure his protection and development;

² On the notion of citizenship in Québec, see Conseil des relations interculturelles, *Un Québec pour tous ses citoyens. Les défis actuels d'une démocratie pluraliste*, an opinion submitted to the Minister of Relations with the citizens and Immigration, February 3, 1997, 91 pages. On the pluralist nature of Québec citizenship, see Will Kymlicka, "American Multiculturalism in the International Arena" in *Dissent*, Fall 1998, pages 73-79.

Whereas all human beings are equal in worth and dignity, and are entitled to equal protection of the law;

Whereas respect for the dignity of the human being and recognition of his rights and freedoms constitute the foundation of justice and peace;

Whereas the rights and freedoms of the human person are inseparable from the rights and freedoms of others and from the common well-being;

Whereas it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;

Therefore, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:

Chapter I

Fundamental freedoms and rights

Section 1. Every human being has a right to life, and to personal security, inviolability and freedom.

He also possesses juridical personality.

Section 2. Every human being whose life is in peril has a right to assistance.

Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.

Section 3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

Section 4. Every person has a right to the safeguard of his dignity, honour and reputation.

Section 5. Every person has a right to respect for his private life.

Section 6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

Section 7. A person's home is inviolable.

Section 8. No one may enter upon the property of another or take anything therefrom without his express or implied consent.

Section 9. Every person has a right to non-disclosure of confidential information.

No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.

The Tribunal must, ex officio, ensure that professional secrecy is respected.

Section 9.1 In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

Chapter I.1

Right to equal recognition and exercise of rights and freedoms

Section 10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

Section 10.1 No one may harass a person on the basis of any ground mentioned in section 10.

Section 11. No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so.

Section 12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

Section 13. No one may in a juridical act stipulate a clause involving discrimination. Such a clause is deemed without effect.

Section 14. The prohibitions contemplated in section 12 and 13 do not apply to the person who leases a room situated in a dwelling if the lessor or his family resides in such dwelling, leases only one room and does not advertise the room for lease by a notice or any other public means of solicitation.

Section 15. No one may, through discrimination, inhibit the access of another to public transportation or a public place, such as a commercial establishment, hotel, restaurant, theatre, cinema, park, camping ground or trailer park, or his obtaining the goods and services available there.

Section 16. No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

Section 17. No one may practise discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional corporation or association of persons carrying on the same occupation.

Section 18. No employment bureau may practise discrimination in respect of the reception, classification or processing of a job application or in any document intended for submitting an application to a prospective employer.

Section 18.1 No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.

Section 18.2 No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

Section 19. Every employer must, without discrimination, grant equal salary or wages to the members of

his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

Section 20. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

Section 20.1 In an insurance or pension contract, a social benefits plan, a retirement, pension or insurance plan, or a public pension or public insurance plan, a distinction, exclusion or preference based on age, sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefore is a risk determination factor based on actuarial data.

In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

Chapter II Political rights

Section 21. Every person has a right of petition to the National Assembly for the redress of grievances.

Section 22. Every person legally capable and qualified has the right to be a candidate and to vote at an election.

Chapter III Judicial rights

Section 23. Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.

The tribunal may decide to sit *in camera*, however, in the interest of morality or public order.

Section 24. No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

Section 24.1 No one may be subjected to unreasonable search or seizure.

Section 25. Every person arrested or detained must be treated with humanity and with the respect due to the human person.

Section 26. Every person confined to a house of detention has the right to separate treatment appropriate to his sex, his age and his physical or mental condition.

Section 27. Every person confined to a house of detention while awaiting the outcome of his trial has the right to be kept apart, until final judgment, from prisoners serving sentence.

Section 28. Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

Section 28.1 Every accused person has a right to be promptly informed of the specific offence with which he is charged.

Section 29. Every person arrested or detained has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights.

Section 30. Every person arrested or detained must be brought promptly before the competent tribunal or released.

Section 31. No person arrested or detained may be deprived without just cause of the right to be released on undertaking, with or without deposit or surety, to appear before the tribunal at the appointed time.

Section 32. Every person deprived of his liberty has a right of recourse to *habeas corpus*.

Section 32.1 Every accused person has a right to be tried within a reasonable time.

Section 33. Every accused person is presumed innocent until proven guilty according to law.

Section 33.1 No accused person may be compelled to testify against himself at his trial.

Section 34. Every person has a right to be represented by an advocate or to be assisted by one before any tribunal.

Section 35. Every accused person has a right to a full and complete defence and has the right to examine and cross-examine witnesses.

Section 36. Every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing or if he is deaf.

Section 37. No accused person may be held guilty on account of any act or omission which at the time when it was committed, did not constitute a violation of the law.

Section 37.1 No person may be tried again for an offence of which he has been acquitted or of which he has been found guilty by a judgment that has acquired status as *res judicata*.

Section 37.2 Where the punishment for an offence has been varied between the time of commission and the time of sentencing, the accused person has a right to the lesser punishment.

Section 38. No testimony before a tribunal may be used to incriminate the person who gives it, except in a prosecution for perjury or for the giving of contradictory evidence.

Chapter IV

Economic and social rights

Section 39. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing.

Section 40. Every person has a right, to the extent and according to the standards provided for by law, to free public education.

Section 41. Parents or the persons acting in their stead have a right to require that, in the public educational establishments, their children receive a religious or moral education in conformity with their convictions, within the framework of the curricula provided for by law.

Section 42. Parents or the persons acting in their stead have a right to choose private educational establishments for their children, provided such establishments comply with the standards prescribed or approved by virtue of the law.

Section 43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group.

Section 44. Every person has a right to information to the extent provided by law.

Section 45. Every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living.

Section 46. Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

Section 47. Husband and wife have, in the marriage, the same rights, obligations and responsibilities.

Together they provide the moral guidance and material support of the family and the education of their common offspring.

Section 48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.

Chapter V Special and interpretative provisions

Section 49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to exemplary damages.

Section 50. The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

Section 51. The Charter shall not be so interpreted as to extend, limit or amend the scope of a provision of law except to the extent provided in section 52.

Section 52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

Section 53. If any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the Charter.

Section 54. The Charter binds the Crown.

Section 55. The Charter affects those matters that come under the legislative authority of Québec.

Section 56.1 In sections 9, 23, 30, 31, 34 and 38, in Chapter III of Part II and in Part IV, the word “tribunal” includes a coroner, a fire investigation commissioner, an inquiry commission, and any person or agency exercising quasi-judicial functions.

Section 56.2 In section 19, the words “salary” and “wages” include the compensations or benefits or pecuniary value connected with the employment.

Section 56.3 In the Charter, the word “law” or “Act” includes a regulation, a decree, an ordinance or an order in council made under the authority of any Act.

Charter of human rights and freedoms, R.S.Q., c. C-12.

Civil rights

Human civil rights

The *Civil Code of Québec*, in harmony with the *Charter of human rights and freedoms* and the general principles of law, governs persons, relations between persons, and property.

Art. 1. Every human being possesses juridical personality and has the full enjoyment of civil rights.

Art. 2. Every person has a patrimony.

The patrimony may be divided or appropriated to a purpose, but only to the extent provided by law.

Art. 3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy.

These rights are inalienable.

Art. 7. No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.

Art. 10. Every person is inviolable and is entitled to the integrity of his person.

Except in cases provided for by law, no one may interfere with his person without his free and enlightened consent.

Art. 11. No person may be made to undergo care of any nature, whether for examination, specimen taking, removal of tissue, treatment or any other act, except with his consent.

If the person concerned is incapable of giving or refusing his consent to care, a person authorized by law or by mandate given in anticipation of his incapacity may do so in his place.

Art. 32. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him.

Art. 35. Every person has a right to the respect of his reputation and privacy.

No one may invade the privacy of a person without the consent of the person or his heirs unless authorized by law.

Civil Code of Québec, S.Q. 1991, c. 64.

Confidentiality of personal information

Section 10. Every person carrying on an enterprise who collects, holds, uses or communicates personal information about other persons must establish and apply such safety measures as are appropriate to ensure the confidentiality of the information.

Section 13. No person may communicate to a third person the personal information contained in a file he holds on another person, or use it for purposes not relevant to the object of the file, unless the person concerned consents thereto or such communication or use is provided for by this Act.

Act respecting the protection of personal information in the private sector, R.S.Q., c. P-39.1.

Consumer rights

Section 8. The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to

exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.

Consumer Protection Act, R.S.Q., c. P-40.1.

Social rights

General goals of the education system

Preamble

WHEREAS every child is entitled to the advantage of a system of education conducive to the full development of his personality;

WHEREAS parents have the right to choose the institutions which, according to their convictions, ensure the greatest respect for the rights of their children;

WHEREAS persons and groups are entitled to establish autonomous educational institutions and, subject to the requirements of the common welfare, to avail themselves of the administrative and financial means necessary for the pursuit of their ends;[...]

Act respecting the Conseil supérieur de l'éducation, R.S.Q., c. C-60.

Right to instructional services

Section 1. Every person is entitled to the educational services of preschool developmental and cognitive learning services and elementary and secondary school instructional services provided for by this Act and by the basic school regulation made by the Government under section 447, from the first day of the school calendar in the school year in which he attains the age of admission to the last day of the school calendar in the school year in which he attains 18 years of age, or 21 years of age in the case of a handicapped person within the meaning of the Act to secure the handicapped in the exercise of their rights (chapter E-20.1).

Every person is also entitled to other educational services, student services and special educational services provided for by this Act and the basic school regulation, within the scope of the programs offered by the school board.

The age of admission to preschool education is 5 years on or before the date prescribed by the basic school regulation; the age of admission to elementary

school education is 6 years on or before the same date.

Section 2. Every person no longer subject to compulsory school attendance is entitled to the educational services prescribed by the basic school regulation for adult education made by the Government under section 448, within the scope of the programs offered by the school board pursuant to this Act.

Section 3. The educational services contemplated in section 1 and offered pursuant to this Act shall be provided free to residents of Québec.

Literacy services and the other learning services prescribed by the basic school regulation for adult education shall be provided free to residents of Québec contemplated in section 2, subject to the conditions prescribed by the said regulation.

Choice of school

Section 4. Every student or, if he is not of full age, his parents, shall have a right to choose, every year, among the schools of the school board to which he belongs, the school best suited to their preferences or having the educational project best suited to their personal values.

The exercise of the right is subject to the student enrollment criteria established by the school board.

The exercise of the right does not entail the right to require transportation services where the transportation services required for the student concerned exceed the limits established by the school board.

Mission of the school

Section 36. The school is an educational institution whose object is to provide education to students other than those enrolled in adult education.

A further object of the school is to contribute to the social and cultural development of the community.

The school shall carry out its mission in accordance with the educational project and other provisions applicable to the school.

Education Act, R.S.Q., c. I-13.3.

Occupational health and safety

Section 9. Every worker has a right to working conditions that have proper regard for his health and physical well-being.

Section 10. In accordance with this Act and the regulations, the worker is entitled, in particular,

(1) to training, information and counselling services in matters of occupational health and safety, especially in relation to his work and his work environment, and to receive appropriate instruction, training and supervision;

(2) to receive the preventive and curative health services relating to the risks to which he may be exposed, and his wages for the time spent in undergoing a medical examination during employment prescribed for the application of this Act and the regulations.

Act respecting occupational health and safety, R.S.Q., c. S-2.1.

Social rights of the child

Section 2. Every child is entitled to receive good, continuous, personal day care until the end of primary school.

The person having parental authority is entitled to choose the day care most convenient for him.

Persons exercising such rights shall take into account the organization and resources of the bodies and persons providing day care, the rules relating to exemptions, financial assistance and grants, as well as the right of a person holding a permit, a school board and a person responsible for home day care to receive or to refuse to receive a child.

An Act respecting child day care, R.S.Q. c. S-4.1.

Section 8. A child is entitled to receive adequate health services, social services and educational services, on all scientific, human and social levels, continuously and according to his personal requirements, taking into account the legislative and regulatory provisions governing the organization and operation of the institution or educational body providing such services and the human, material and financial resources at its disposal.

Youth Protection Act, R.S.Q. c. P-34.1.

Right to health services

Section 2. Subject to any other applicable legislative provision, nothing in this Act shall restrict the freedom of a resident of Québec to choose the professional by whom he wishes to be treated, or that of such a professional to agree or refuse to treat such a person.

Health Insurance Act, R.S.Q., c. A-29.

Section 4. Every person is entitled to be informed of the existence of the health and social services and resources available in his community and of the conditions governing access to such services and resources

Section 5. Every person is entitled to receive, with continuity and in a personalized manner, health services and social services which are scientifically, humanly and socially appropriate.

Section 6. Every person is entitled to choose the professional or the institution from whom or which he wishes to receive health services or social services.

Nothing in this Act shall restrict the freedom of a professional to accept or refuse to treat a person.

Section 7. Every person whose life or bodily integrity is endangered is entitled to receive the care required by his condition. Every institution shall, where requested, ensure that such care is provided.

Section 8. Before giving his consent to care concerning him, every user of health services and social services is entitled to be informed of his state of health and welfare and to be acquainted with the various options open to him and the risks and consequences generally associated with each option.

Section 9. No person may be made to undergo care of any nature, whether for examination, specimen taking, treatment or any other intervention, except with his consent.

Consent to care or the authorization to provide care shall be given or refused by the user or, as the case may be, his representative or the court, in the circumstances and manner provided for in article 19 and in subsequent articles of the Civil Code of Lower Canada.

Section 10. Every user is entitled to participate in any decision affecting his state of health or welfare.

He is entitled, in particular, to participate in the development of his intervention plan or individualized service plan where such plans are required under sections 102 and 103.

The same applies to any modification made to such plans.

Section 11. Every user is entitled to be accompanied and assisted by the person of his choice when he wishes to obtain information or take steps in relation to any service provided by an institution or on its behalf or by any professional practising in a centre operated by the institution.

Section 13. The right to health services and social services and the right to choose a professional and an institution as provided in sections 5 and 6 shall be exercised within the framework of the legislative and regulatory provisions relating to the organizational and operational structure of the institution and within the limits of the human, material and financial resources at its disposal.

Act respecting health services and social services, R.S.Q., c. S-4.2.

Employees' right of association

Section 3. Every employee has the right to belong to the association of employees of his choice, and to participate in the formation, activities and management of such association.

Labour Code, R.S.Q., c. C-27.

Language rights

Charter of the French language

Preamble

WHEREAS the French language, the distinctive language of a people that is in the majority French-speaking, is the instrument by which that people has articulated its identity;

Whereas the National Assembly of Québec recognizes that Quebecers wish to see the quality and influence of the French language assured, and is resolved therefore to make of French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;

Whereas the National Assembly intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the institutions of the English-speaking community of Québec, and respectful of the ethnic minorities, whose valuable contribution to the development of Québec it readily acknowledges;

Whereas the National Assembly of Québec recognizes the right of the Amerinds and the Inuit of Québec, the first inhabitants of this land, to preserve and develop their original language and culture:

Whereas these observations and intentions are in keeping with a new perception of the worth of national cultures in all parts of the earth, and of the obligation of every people to contribute in its special way to the international community;

Therefore, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:

The official language of Québec

Section 1. French is the official language of Québec.

Section 2. Every person has a right to have the civil administration, the health services and social services, the public utility firms, the professional corporations, the associations of employees and all business firms doing business in Québec communicate with him in French.

Section 3. In deliberative assembly, every person has a right to speak in French.

Section 4. Workers have a right to carry on their activities in French.

Section 5. Consumers of goods and services have a right to be informed and served in French.

Section 6. Every person eligible for instruction in Québec has a right to receive that instruction in French.

The language of the legislature and the courts

Section 7. French is the language of the legislature and the courts in Québec, subject to the following:

(1) legislative bills shall be printed, published, passed and assented to in French and in English, and the statutes shall be printed and published in both languages;

(2) the regulations and other similar acts to which section 133 of the Constitution Act, 1867 applies shall be made, passed or issued, and printed and published in French and in English:

(3) the French and English versions of the texts referred to in paragraphs 1 and 2 are equally authoritative;

(4) either French or English may be used by any person in, or in any pleading in or process issuing from, any court of Québec.

Section 9. Every judgment rendered by a court of justice and every decision rendered by a body discharging quasi-judicial functions shall, at the request of one of the parties, be translated into French or English, as the case may be, by the civil administration bound to bear the cost of operating such court or body.

Instruction in English in the schools

Section 72. Instruction in the kindergarten classes and in the elementary and secondary schools shall be in French, except where this chapter allows otherwise.

This rule obtains in school bodies within the meaning of the Schedule and in private educational institutions accredited for purposes of subsidies under the Act respecting private education (chapter E-9.1) with respect to the educational services covered by an accreditation.

Nothing in this section shall preclude instruction in English to foster the learning thereof, in accordance with the formalities and on the conditions prescribed in the basic school regulations established by the Government under section 447 of the Education Act (chapter I-13.3).

Section 73. The following children, at the request of one of their parents, may receive instruction in English:

(1) a child whose father or mother is a Canadian citizen who received elementary instruction in English in Canada, provided that that instruction constitutes the major part of the elementary instruction he or she received in Canada;

(2) a child whose mother is a Canadian citizen and who has received or is receiving elementary or secondary instruction in English in Canada, and the brothers and sisters of that child, provided that that instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada;

(3) a child whose father and mother are not Canadian citizens, but whose father or mother received elementary instruction in English in Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec;

(4) a child who, in his last year in school in Québec before 26 August 1977, was receiving instruction in English in a public kindergarten class or in an elementary or secondary school, and the brothers and sisters of that child;

(5) a child whose father or mother was residing in Québec on 26 August 1977 and had received elementary instruction in English outside Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received outside Québec.

Amerindic languages and Inuktitut

Section 87. Nothing in this Act prevents the use of an Amerindic language in providing instruction to the Amerinds, or of Inuktitut in providing instruction to the Inuit.

Section 88. Notwithstanding sections 72 to 86, in the schools under the jurisdiction of the Cree School Board or the Kativik School Board, according to the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14), the languages of instruction shall be Cree and Inuktitut, respectively, and the other languages of instruction in use in the Cree and Inuit communities in Québec on the date of the signing of the Agreement indicated in section 1 of the Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67), namely, 11 November 1975.

The Cree School Board and the Kativik School Board shall pursue as an objective the use of French as a language of instruction so that pupils graduating from their schools will in future be capable of continuing their studies in a French school, college or university elsewhere in Québec, if they so desire.

Charter of the French language, R.S.Q., c. C-11.

English language school board

Section 205. Only those persons who, according to law, are entitled to receive instruction in the English language and who elect to come under the jurisdiction of an English language school board come under the jurisdiction of that school board.

Education Act, R.S.Q., c. I-13.3.

Health services in the English language

Section 15. English-speaking persons are entitled to receive health services and social services in the English language, in keeping with the organizational structure and human, material and financial resources of the institutions providing such services and to the extent provided by an access program referred to in section 348.

An Act respecting health services and social services, R.S.Q., c. S-4.2.

Others rights (Environment, Information)

The right of access to Information

Section 9. Every person has a right of access, on request, to the documents held by a public body.

The right does not extend to personal notes written on a document or to sketches, outlines, drafts, preliminary notes or other documents of the same nature.

Act respecting access to documents held by public bodies and the protection of personal information, R.S.Q., c. A-2.1.

The right to a healthy environment

Section 19.1. Every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, to the extent provided for by this Act and the regulations, orders, approvals and authorizations issued under any section of this Act.

Environment Quality Act, R.S.Q., c. Q-2.

Parliamentarism and electoral system

Principles of Québec democracy

Preamble

WHEREAS the people of Québec have a deep attachment to democratic principles of government;

WHEREAS the National Assembly is, through the elected representatives who compose it,

the supreme and legitimate organ by which those principles are expressed and applied;

WHEREAS it behooves this Assembly, as the guardian of the historical and inalienable rights and powers of the people of Québec, to defend it against any attempt to despoil it of its rights and powers or to derogate from them;

WHEREAS it is befitting, therefore, that the perdurance, the sovereignty and the independence of the National Assembly be affirmed, and that its proceedings be protected against all interference;

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

Section 1. The National Assembly is composed of the Members elected for each of the electoral divisions established in accordance with the Election Act (chapter E-3.3) and whose names have been transmitted to the Secretary General by the chief electoral officer in accordance with section 380 of the said Act.

Section 2. The National Assembly and the Lieutenant-Governor form the Parliament of Québec. The Parliament of Québec assumes all the powers conferred on the Legislature of Québec.

No provision of this Act restricts the scope or exercise of those powers.

Section 3. The Parliament has the exercise of the legislative power.

Section 4. The Assembly has the power of supervision over all the acts of the Government and of its departments and agencies.

Section 5. The Assembly is convoked, prorogued and dissolved by the Lieutenant-Governor.

Section 6. A Legislature has a term of not more than five years, beginning from the receipt by the Secretary General after the general election of the list of the candidates declared elected transmitted by the chief electoral officer pursuant to section 380 of the Election Act (chapter E-3.3).

Only the Lieutenant-Governor may dissolve the Assembly before the expiry of five years.

Section 29. The National Assembly passes the legislative Acts and the Lieutenant-Governor gives assent to them.

Section 42. The Assembly has the power to protect its proceedings against all interference.

Section 43. Every Member is vested with full independence for the carrying out of his duties.

Act respecting the National Assembly, R.S.Q., c. A-23.1.

Qualified electors

Section 1. Every person who

- (1) has attained 18 years of age,
- (2) is a Canadian citizen,
- (3) has been domiciled in Québec for six months or, in the case of an elector outside Québec, for 12 months,
- (4) is not under curatorship, and
- (5) is not deprived of election rights, pursuant to section 568, is a qualified elector.

The domicile of a person is the domicile established under the Civil Code of Québec (Statutes of Québec, 1991, chapter 64).

Every person entitled to exercise his right to vote outside Québec is deemed to be domiciled in Québec.

Electoral divisions

Section 14. Québec shall be divided into electoral divisions delimited in such a way as to ensure that the principle of effective representation of electors is respected.

Electoral divisions, numbering not fewer than 122 nor more than 125, shall be delimited taking into account the principle that the vote of each elector is of equal weight.

Principles of the electoral riding

Section 15. An electoral division represents a natural community established on the basis of demographical and sociological considerations, such as the population density, the relative growth rate of the population, the accessibility, area and shape of the region, the natural local boundaries and the limits of local municipalities.

Election Act, R.S.Q., c. E-3.3.

Rules governing referendums

Section 7. The Government may order that the electors be consulted by referendum

- (a) on a question approved by the National Assembly in accordance with sections 8 and 9, or
- (b) on a bill adopted by the National Assembly in accordance with section 10.

As soon as the National Assembly is informed of the question or bill contemplated in the first paragraph, the Secretary General of the National Assembly shall notify the chief electoral officer thereof in a writing.

Section 8. On a motion of the Prime Minister, the National Assembly may adopt the text of a question which is to be the subject of a referendum. The debate on this motion is business having precedence over any other question, except the debate on the Opening Speech of the session.

Section 10. A bill adopted by the National Assembly cannot be submitted to a referendum unless it contains, at the time of being tabled, a provision to that effect, as well as the text of the question submitted for the referendum.

This bill cannot be presented for assent until it has been submitted to the electors by way of a referendum.

Section 12. There shall not be, during the same Legislature, more than one referendum on the same subject or on a subject which, in the opinion of the Conseil du référendum, is substantially similar to the former subject.

Referendum Act, R.S.Q., c. 64-1.

Municipal referendums

Section 517. The council of a municipality may for consultation purposes submit any question within its competence to its qualified voters or to those of that part of its territory concerned by the question.

The question shall be formulated in such a manner as to require “yes” or “no” as an answer; it shall be defined by a resolution which, for the purposes of this Title, is deemed to be the subject of the referendum.

The council may order that a referendum poll be held without it being subject to the provisions of Chapter IV.

Act respecting elections and referendums in municipalities, R.S.Q., c. E-2.2.

Executive branch and public service

Attribution and powers of the executive

Section 1. In matters within the jurisdiction of the Legislature, all powers, authorities and functions which, in respect of like matters, were vested in or exercisable by the Governors or Lieutenant-Governors of the several Provinces now forming part of the Dominion of Canada or any of the said Provinces, under commissions, instructions or otherwise, at or before the passing of the Union Act, are and shall be (so far as the Legislature has power thus to enact) vested in and exercisable by the Lieutenant-Governor or Administrator for the time being of Québec, in the name of Her Majesty or otherwise as the case may require; subject always to the royal prerogative as heretofore.

Composition and President of Conseil exécutif

Section 3. The Conseil exécutif du Québec shall consist of such persons as the Lieutenant-Governor may appoint.

Section 6. The member of the Conseil exécutif holding the recognized position of Prime Minister shall be, *ex officio*, President of the Conseil exécutif.

Executive Power Act, R.S.Q., c. E-18.

Conduct of intergovernmental affairs

Section 1. The Ministère du Conseil exécutif shall be presided over by the Prime Minister.

Section 1.1. The Secretary General of the Conseil exécutif is *ex officio* Deputy Minister of the Ministère du Conseil exécutif.

Section 3.5. The Minister, in conducting Canadian intergovernmental affairs, shall see that the constitutional jurisdiction of Québec is respected.

The Minister shall furthermore ensure the participation of the Government in the preparation and implementation in Canada of federal policies and programs affecting the development of Québec and, for that purpose, favour intergovernmental cooperation.

Act respecting the ministère du Conseil exécutif, R.S.Q., c. M-30.

International relations

Section 11. The Minister shall plan, organize and direct the foreign activities of the Government and of its departments and agencies and shall coordinate their activities in Québec respecting international relations.

He shall, in cooperation with the departments concerned, devise an international relations policy, propose it to the Government and see to its implementation. The policy must favour the influence and development of Québec, particularly on the commercial, cultural, economic, political and social planes.

The Minister, by virtue of his office, is

(1) the adviser to the Government and to its departments and agencies on all matters having to do with international relations;

(2) the depositary of the original copy of every international agreement and of a true copy of every other agreement and, as such, he shall establish a bureau des ententes and prescribe the method of registration of such agreements.

He shall establish and maintain such relations with foreign governments and their departments, with international organizations, and with the agencies of such governments and organizations as the Government considers it expedient to have with them.

He shall favour the strengthening of the international French language institutions of which the Government is a member in consideration of the interests of Québec.

Section 14. The Minister shall conduct all official communications between the Government and its departments and agencies on the one part, and foreign governments and their departments, international organizations, and the agencies of such governments and organizations, on the other part, and shall maintain liaison with their representatives on Québec soil.

He shall favour the establishment of international organizations and representatives of foreign governments on Québec soil.

Section 15. The Minister, in the conduct of international relations, shall see that the constitutional jurisdiction of Québec is respected.

Section 17. The Minister shall make recommendations to the Government as to the ratification of international treaties or accords in fields within the constitutional jurisdiction of Québec.

He shall ensure and coordinate the implementation in Québec of international treaties and accords in which the Government is involved.

Act respecting the ministère des Relations internationales, R.S.Q., c. M-25.1.1.

Role of the public service

Section 2. The role of the public service is to provide the public with the services of quality to which it is entitled, implement the policies formulated by constituted authority and ensure the attainment of the other objectives of the state.

Section 3. The object of this Act is to enable the public service to fulfil its role. For that purpose, the Act establishes a mode of organization of human resources intended to promote

(1) efficient administration and optimum utilization and development of human resources,

(2) the exercise of the powers of human resources management at the least possible hierarchical remove from the persons concerned and the application of a system under which the public servant vested with such management powers is accountable for his acts, within the means put at his disposal,

(3) equal opportunity for employment in the public service for all citizens,

(4) impartiality and fairness in decisions affecting public servants, and

(5) optimum contribution of the various components of Québec society to the public service.

Section 5. Every public servant is bound *ex officio* to be loyal and to bear allegiance to constituted authority.

A public servant shall perform his duties in the public interest, to the best of his ability, with honesty and impartiality, and shall treat the public with consideration and diligence.

Public Service Act, R.S.Q., c. F-3.1.1.

Duty of the government to act fairly

Section 2. The procedures leading to an individual decision to be made by the Administration, pursuant to norms or standards prescribed by law, in respect of a citizen shall be conducted in keeping with the duty to act fairly.

Act respecting administrative justice, R.S.Q., c. J-3.

Appointment and role of the Public Protector

Section 1. On motion by the Prime Minister, the National Assembly shall appoint a person called the "Public Protector" and fix his salary.

To be valid, such an appointment must be approved by two-thirds of the members of the National Assembly.

Section 13. The Public Protector shall intervene, subject to sections 18 to 19.1, whenever he has reasonable cause to believe that a person or group of persons has suffered or may very likely suffer prejudice as the result of an act or omission of a public body, its chief executive officer, its members or a person holding an office, employment or position accountable to the chief executive officer.

The Public Protector shall intervene on his own initiative or at the request of any person or group of persons acting on his or its own behalf or on behalf of another person.

Section 23. Where the Public Protector deems it expedient to intervene, he shall give the author of the act or omission or, if the latter is a public body, the chief executive officer thereof, an opportunity to be heard and, where appropriate, shall invite him to remedy the prejudicial situation.

Where an intervention addressed to the author of the act or omission, and to his superiors if deemed expedient by the Public Protector, has failed to remedy the prejudicial situation, the Public Protector shall give the chief executive officer of the

public body an opportunity to be heard and, where appropriate, shall invite him to remedy the situation.

Public Protector Act, R.S.Q., c. P-32.

Local autonomy

Section 15. The Government, by letters patent, may incorporate as a city or town municipality any municipality in Québec which is governed by the Municipal Code (chapter C-27.1), if its population is not less than two thousand, after the formalities prescribed in the following provisions have been observed; the Government may exercise the same power if the population of the municipality is less than two thousand, if it has been shown to its satisfaction that exceptional circumstances so require.

Cities and Towns Act, R.S.Q., c. C-19.

Citizenship

Section 10. The Minister shall be responsible for the promotion of human rights and freedoms and shall foster the exercise by citizens of their civic and social responsibilities.

The Minister shall be charged with promoting solidarity between generations, giving proper consideration to the needs of families, the young and the elderly, and with promoting openness to pluralism, and closer intercultural relations, so as to foster a sense of belonging to the Québec people.

The Minister shall also be responsible for immigration matters.

Act respecting the Ministère des Relations avec les citoyens et de l'Immigration, R.S.Q., c. M-25.01.

Flag, National Holiday and capital of Québec

The Fleurdelisé, official flag

WHEREAS by order-in-council of the 21st of January, 1948, the Government gave the Province an official flag;

WHEREAS that flag is appropriate to the historical origins, traditions and rights of the people of Quebec;

THEREFORE, Her Majesty, with the advice and consent of the Legislative Council and of the National Assembly of Québec, enacts as follows:

Section 1. The flag generally designated by the name of the fleurdelisé flag, namely a flag bearing a white cross on sky-blue ground and with the fleur-de-lis, but modified so that the fleur-de-lis is in a vertical position, is, and has been since the 21st of January 1948, the official flag of the Province of Québec.

Act respecting the official flag, R.S.Q., c. D-13.

National Holiday

Section 1. The 24th of June, St. John the Baptist Day, is the National Holiday.

National Holiday Act, R.S.Q., c. F-1.1.

National capital of Québec

Preamble

WHEREAS the city of Québec is the national capital of Québec;

WHEREAS the status of national capital has major impacts that extend beyond the territory of the city of Québec;

WHEREAS the institutions, sites and monuments of the national capital bear witness to the political history of Québec;

WHEREAS the national capital must be planned, developed and enhanced in keeping with its function as the seat of State institutions, in a manner consistent with its historic and patrimonial vocation;

WHEREAS it is necessary to establish a body responsible for promoting and supporting the city of Québec in its role as the national capital and for ensuring, in the manner provided by law, that the functions arising from its status are recognized;

The parliament of Québec enacts as follows:
[...]

Act respecting the National Capital Commission, R.S.Q., c. C-33.1.

Québec's constitutional fields of jurisdiction

The Constitution Act, 1867

Exclusive Powers of Provincial Legislatures

Section 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Section 92A. (1) In each province, the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimi-

nation in prices or in supplies exported to another part of Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

“Primary production”

(5) The expression “primary production” has the meaning assigned by the Sixth Schedule.

Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section.

Legislation respecting Education

Section 93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section. (50)

Legislation respecting old age pensions and supplementary benefits

Section 94A. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter.

Concurrent Powers of Legislation respecting Agriculture and Immigration

Section 95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Contemporary Political Documents

Constitutional reform of 1982

If one issue has dominated political debate in Québec and Canada over the past 15 years, it is the constitutional reform of 1982, initiated in 1981 by the federal Liberal government under Pierre Elliott Trudeau and completed in 1982. The meaning and consequences of this reform continue to spark controversy even today. For some people, the reform allowed Canada to achieve a state of normalcy. While the country achieved its independence along with other British colonies in 1931 under the Treaty of Westminster, it remained for it to overcome one last obstacle to sovereignty, i.e. the power to amend its Constitution. Westminster was the master of the Constitution of Canada until 1982 and amended its provisions from time to time at the joint request of the federal Parliament and the provinces. In the mind of Pierre Elliott Trudeau, Minister of Justice in the Pearson government (1967), then federal Prime Minister (1968-1979, 1980-1984), Canada's acquisition of complete sovereignty, commonly known as "repatriating the Constitution", depended on the adoption of a constitutional charter of rights that conferred on the Canadian judiciary complete control over the country's statutes. The 1982 reform achieved these two ambitions. In March 1982, the Parliament of Westminster adopted the Constitution Act, 1982 (U.K., 1982, c. 11), in which it permanently relinquished its residual sovereignty over Canada and adopted a series of provisions that amended the Constitution of Canada. These provisions included the Canadian Charter of Rights and Freedoms and an amending formula.

This reform was preceded neither by a referendum nor general elections and it sparked strong reactions in Québec. Its opponents felt that the reform went against the spirit and, indeed, the letter, of the 1867 federal pact and meant for Québec a loss of status and jurisdiction. Mention should be made of the events that led to this controversial reform.¹ For several decades, Ottawa and the provinces had attempted to reach agreement on a proposal to repatriate the Constitution. Several projects almost succeeded. In 1961, 1966 and 1971, Québec govern-

ments rejected the repatriation proposals. In their minds, the repatriation hinged on a reform of the division of powers, which would give the provinces broader, clearer jurisdiction. The division of powers had scarcely been updated since 1867. Québec's veto put paid to the proposals, despite the strong desire of the federal government and the other provinces to proceed. On such a basic issue as the adoption of an amending formula, a constitutional charter of rights and a new division of responsibilities, it was understood that the unanimous consent of the partners of the federation was required or at least, that Québec consent to the proposal.

The May 1980 referendum on sovereignty-association, in which 60% of Québec voters refused to give the Québec government a mandate to negotiate such a project, altered the political order. The Trudeau government decided to proceed with its new constitutional proposal centred on the amending formula and a charter of rights. During the 1980 referendum campaign, Prime Minister Trudeau promised Quebecers that a No to sovereignty-association would be interpreted as a desire for the renewal of federalism. Many people believed that this promise would satisfy "Québec's traditional demands", i.e. the recognition of Québec as a distinct society and the granting of broader legislative and fiscal autonomy.

In September 1980, the Trudeau government convened a constitutional conference and announced its intention to submit to Westminster its repatriation project, even without the approval of the provinces. Several provinces, including Québec, denounced this unilateral undertaking, which ran counter to the principles of federalism, and formed a common front. The question quickly spilled over into the legal arena. In September 1981, the Supreme Court ruled that the proposed reform, which would give constitutional expression to the charter of rights, would reduce the powers of the provinces. Moreover, the unilateral procedure being contemplated by the federal government, although it was, strictly speaking, legal, infringed on the well established constitutional convention between the governments of the country requiring the substantial support of the provinces for a constitutional reform project. Otherwise, the reform would be illegal from the standpoint of the unwritten law governing Canadian federalism.

Another conference was convened in November 1981. The Trudeau government succeeded in isolating Québec and in negotiating in its absence a new reform proposal including a charter of rights and an amending formula. Two key federal policies, offi-

¹ For a more detailed description of these events, readers are encouraged to refer to numerous works and articles on the question, several of which are mentioned in Marc Chevrier, *Canadian Federalism and the Autonomy of Québec : A Historical Viewpoint*, Études et documents, Ministère des Relations internationales, 1996, 38 pages.

cial bilingualism and multiculturalism, were sanctioned, thus elaborating a “unitary” concept of Canadian society in which Québec was neither recognized as a distinct society nor one of the founding peoples. The proposed amending formula, based on the formal equality of the provinces, deprived Québec of its traditional right of veto in respect of constitutional reform. The National Assembly adopted two motions of protest against the proposal and the Québec government, a decree. Following hearings in the federal Parliament, the federal government ignored Québec’s opposition and submitted its proposal to Westminster, which adopted it in March 1982. Queen Elizabeth II proclaimed the new Act on April 15, 1982.

The texts reproduced below provide a glimpse of debate in the National Assembly in the fall of 1981. As soon as the Supreme Court ruling on the federal government’s unilateral proposal was made public, the Québec National Assembly was convened in an emergency session. Debate focused on the adoption of a motion demanding that the federal government defer its project. Québec Prime Minister René Lévesque and Leader of the Opposition Claude Ryan took the floor, each in turn. Their speeches contained a common thread. Both speakers perceived the federal project as a serious attack on the underpinnings of Québec democracy. René Lévesque pointed out that the National Assembly is the only political decision-making centre that belongs solely to the Québec people. Claude Ryan noted that it is the paramount organ of the Québec people in the areas that fall under its jurisdiction and the special political instrument through which the Québec people can organize its present and its future. The federal proposal, by curtailing the powers of the National Assembly, affected the right of the Québec people to be represented and governed by its own political institutions, whose sovereignty was delineated by the federal pact of 1867.

While the Parti Québécois government and the Opposition agreed unanimously on the motion of October 2, 1981, they did not agree on the motion of December 1, which set out Québec’s conditions for adhering to the repatriation proposal. These conditions were the recognition of the two founding peoples of Canada and of Québec as a distinct society, the retrocession of Québec’s right of veto in constitutional matters, confirmation of the precedence of the Québec Charter of human rights and freedoms (adopted in 1975) over the Canadian Charter, and respect for Québec’s constitutional jurisdiction with respect to language and education. The constitutional reform that came into force in April 1982 satisfied

none of these conditions. (In an opinion handed down in December 1982, the Supreme Court declared that Québec did not have a right of veto over constitutional reform projects, a decision that came eight months after the *fait accompli*.)

The constitutional reform was not the success that the Trudeau government had hoped. Since 1982, all Québec governments, whether Liberal or Parti Québécois, have, in turn, contested the reform’s legitimacy. The Constitution Act, 1982, (as the reform is officially called) thus appeared to Québec as a constitutional statute that is legally applicable but politically illegitimate.² How can such a situation prevail? This means that, out of a concern for yielding to the principle of legality, Québec political institutions have generally observed the decisions that have arisen from the new constitutional order imposed in 1982, and the attendant constraints. In light of the Canadian Charter of Rights and Freedoms, adopted in 1982, the courts, and mainly the Supreme Court, have overruled certain Québec statutes. The National Assembly has either yielded to the legal decisions or taken advantage of a special provision in the Constitution Act, 1982, which allows it to shield its legislation from the application of several sections of the Canadian Charter, for a period of five years, subject to renewal.

Moreover, while it may be legally binding, the Constitution Act, 1982, commands neither the respect nor the recognition in Québec worthy of the Constitution of a federal State democratically approved by all of its partners. Québec was excluded from the negotiation and conception of the 1982 Act, i.e. one of the members of the federal union of 1867, no more and no less, was excluded from the reform of the Canadian federation. The 1982 Act reflects the constitutional viewpoint of English Canada and the federal government, not that of a distinct society, which also has its own concept of federalism, the political community and constitutional justice. It is hardly surprising that, 15 years after the coming into force of the Constitution Act, 1982, the Québec government has reiterated its opposition to it (the decree adopted by the Cabinet on April 16, 1997 is reproduced below).

Another consequence of this lack of legitimacy affected the course of constitutional reform in Canada after 1982.³ Once the federal Progressive

² See, concerning this distinction, André Patry, “Une constitution illégitime” in *Le Devoir*, February 13, 1998.

³ On the question of constitutional reform after 1982, see, in particular, Alain-G. Gagnon, “La réforme des institutions au

Conservatives under Brian Mulroney had come to power in Ottawa in 1984 and the Liberal government of Robert Bourassa was elected in Québec in 1985, the notion of making amends quickly came to the fore. In 1985, the Bourassa government stipulated its conditions for adhering to the 1982 constitutional reform, in light of which the Meech Lake constitutional accord was reached in June 1987, which was to be ratified by all of the country's legislative assemblies within three years. The ratification was not achieved and the agreement was rendered null and void. A second attempt at redress was made during the winter of 1992 and led in August 1992 to the Charlottetown Accord, which Canadian and Québec voters rejected in two referendums held in October 1992.

*In the eyes of the Bourassa government, the failure of the Meech Lake and Charlottetown accords discredited the process of multilateral constitutional reform, from which Québec subsequently withdrew. As a result, constitutional reform is, for all intents and purposes, stalled. Unless Québec receives proper redress through a successful constitutional reform, Canada will find it virtually impossible to reform federal institutions, such as the Supreme Court and the Senate, or the division of powers, or to implement aboriginal self-government.*⁴

On April 16, 1997, the National Assembly adopted a resolution respecting constitutional amendment, which shielded Québec from certain provisions in the federal pact of 1867 maintaining the rights and privileges of denominational schools. The federal Parliament approved the proposed amendment, which came into force in December 1997. Recourse to this amending procedure should not be construed as recognition in any way by Québec of the Constitution Act, 1982. The provisions Québec has shielded itself from concern only its internal constitution. They originate in the federal pact of 1867, not the reform of 1982. This amendment was achieved through bilateral means and not a multilateral

amendment. One of the whereas clauses of the April 16 resolution clearly indicates Québec's continued opposition.

Debate on the motion demanding that the federal government renounce its unilateral undertaking concerning the Constitution of Canada

Québec National Assembly
30 September 1981

René Lévesque, Prime Minister of Québec

Mr. President, if the National Assembly has been urgently convened today, it is because two days ago the Supreme Court finally handed down its opinion on the constitutional project of the Liberal government in Ottawa and in two weeks the federal Parliament will once again convene with, presumably, this issue as a matter of the utmost urgency there as well. Consequently, we felt that it was not only advisable but imperative that this Parliament, in Québec City, say once again to a large extent but reiterate as clearly as possible what it has to say on the essentials without waiting until the last minute. [...] But above all, beyond the parliamentarians that we are and who pass legislation, it is Québec society as a whole that is threatened with respect to its rights and its most fundamental interests, for the most vital of which this Assembly is the guardian and with regard to which it has a duty to act as a shield. Were we to forget this, were we to overlook what has been perpetrated in Ottawa, this Parliament, in Québec City, which is the only political decision-making centre that belongs solely to the Québec people, this instrument that is already so impoverished, so vulnerable, whose inadequacy has been emphasized by all of the Québec governments that have preceded us since the turn of the century, this Parliament that is already so impoverished would have agreed to let itself be further diminished and condemned itself to insignificance. The entire population that it represents would, by the same token, be reduced to an even more stunted state than ever in respect of its dignity and means of collective defence, and even its chances in life, including in economic life. [...]

By going to the Supreme Court, which the common front of eight resisting provinces wanted to have established, there are three distinct issues: first, the Supreme Court was asked whether, in its opinion, the federal constitutional project infringed on the rights and powers of the provincial parliaments, starting, in our view, with this National Assembly. It

Canada : de la délibération démocratique au repli bureaucratique" in Serge Jaumain (director), *Le réforme de l'État... et après ? L'impact des débats institutionnels en Belgique et au Canada*. Brussels: Université de Bruxelles, 1996, pages 105-122; Peter H. Russell, *Constitutional Odyssey: Can Canadians Be a Sovereign People?* Toronto: University of Toronto Press, 1992.

⁴ On the political and social consequences of this stalemate, see Ingo Kolboom, "Révolution tranquille ou tranquille résignation ? Réflexions sur la "double ouverture" de l'identité québécoise" in Ingo Kolboom, Maria Lieber, Edward Reichel (directors), *Le Québec : Société et Cultures. Les enjeux identitaires d'une Francophonie lointaine*. Dresden: Dresden University Press, 1998, pages 69-89.

was important, it had become important to confirm this point, even if it seemed obvious to anyone who knows how to read and displays some measure of good faith. [...]

Yes, the federal project infringes on the rights and powers of the Québec National Assembly and, consequently, on the rights and powers and, as a result, certain facets of the security and most essential chances for development of all Quebecers. [...]

Here are the terms in which this court especially interested in the question as regards everything that may follow recognizes that the diminution of powers exceeds in importance everything seen until now. The Supreme Court is unanimous in saying “the *Charter of Rights* would operate retrospectively as well as prospectively with the result that laws enacted in the future as well as in the past, even before Confederation, would be exposed to attack if inconsistent with the provisions of the *Charter of Rights*. This Charter would thus abridge provincial legislative authority on a scale exceeding the effect of any previous constitutional amendment for which provincial consent was sought and obtained.” [...]

However, if such is not the case, we must resist by all legitimate means. One of the most solemn, significant means is precisely the one that has assembled us here today, i.e. the voice and weight of the Québec National Assembly. The Assembly says no, clearly and massively, to what all Québec governments and Parliaments have refused, except that, this time, the situation is worse than everything that they have attempted to inflict on us in the past. [...]

Claude Ryan, Leader of the Opposition

[...] I read the text of the motion and think, above all, of the situation with which we are grappling, and it strikes me that what is at stake is clear and simple. What is at stake is the defence of Québec’s legislative powers, and the defence of Québec’s constitutional powers, which are more seriously threatened by the project that the federal government is advocating. At the end of its opinion in response to question 2, the Supreme Court states in black and white that the federal government’s project is unconstitutional from the standpoint of convention and that it would have serious repercussions on the legislative powers of the provinces. It is on this issue that we will be asked to vote and that the public is waiting to hear our opinion and our option. Given this problem, it would be utterly unthinkable for the National Assembly to remain silent or display indifference. The National Assembly is the supreme body of Québec

society in the fields that fall under its jurisdiction. Consequently, it is incumbent upon the Assembly and the Assembly alone, aside from the Québec people, to make decisions, above all if it is a question of altering or reducing its powers. Moreover, the National Assembly is the key political instrument available to the Québec people to organize its present and future in a manner that reflects its perception of its legitimate interests and its clearly understood aspirations. The project put forward by our colleagues in the federal Parliament directly affects and calls into question the powers, fields of jurisdiction and constitutional prerogatives of the National Assembly. We must firmly conclude that every time the essential prerogatives of the National Assembly are undermined, it is the Québec people itself that is undermined. To be indifferent to the undermining of the powers of the National Assembly is to be indifferent to or to treat cavalierly the aspirations and basic reality of the Québec people itself. [...]

I personally maintain, without the slightest hesitation, that, faced with this situation, we must act frankly, with clarity and courage, without evading the question, with a concern for fulfilling our duty, which is to defend, first and foremost, the rights of Québec and its National Assembly and to act, as well, with an awareness that when the National Assembly is undermined, it is the people of Québec itself that is directly involved. [...]

That being said, there are times in the history of all peoples when the supreme interest of the community must prevail over prejudices, mistrust and the legitimate interests of groups and parties. The situation that the federal project has created, the unilateral and unconstitutional amendment, in light of convention and the existing Canadian constitution, provides the basis for one of these historic moments, which, I hope, we will have an opportunity to experience together. As I noted earlier, it is the integrity of the legislative and constitutional powers of the National Assembly that are in question. We have no right to bury our heads in the sand when the issue is such a basic one. [...]

I would like to express a second wish to the federal government. I believe that it would be highly advisable and desirable for the federal government to agree to modify its project so that the charter of rights is incorporated into the Canadian constitution but applies only to the federal Parliament and institutions and to those provinces that freely choose it, either by means of a resolution adopted by their legislature, or through a referendum held in the provinces concerned. [...]

Source: *Débats de l'Assemblée nationale du Québec*, 1981, vol. 25, p. 14-15, 20, 23, 30, 32. [OUR TRANSLATION]

Motion requesting that the federal government renounce its proposal to repatriate the Constitution in the wake of the Supreme Court judgment

National Assembly of Québec
Friday, 2 October 1981

The Supreme Court of Canada having decided that the federal proposal respecting the Constitution of Canada decreases the powers of the National Assembly of Québec and that unilateral action by the federal government, although legal, is unconstitutional, being contrary to convention, this Assembly demands that the federal government renounce its unilateral course of action, is opposed to any action that could impair its rights and affect its powers without its consent, and requests that the federal and provincial governments resume negotiations immediately, with full respect for the principles and conventions that must apply to any modification of the Canadian federal system.

The motion was then adopted on the following division:

Yeas: 111 Nays: 9 Abstentions: 0

Source: *Votes and Proceedings of the National Assembly of Québec*, 2 October 1981, No. 3, pages 9-10.

Motion on the proposed repatriation of the Constitution

National Assembly of Québec
Tuesday, 1 December 1981

The National Assembly of Québec,

mindful of the right of the people of Québec to self-determination,

and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec,

declares that it cannot accept the plan to patriate the Constitution unless it meets the following conditions:

1. It must be recognized that the two founding peoples of Canada are fundamentally equal and that Québec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community.

2. The constitutional amending formula
(a) must either maintain Québec's right of veto, or

(b) be in keeping with the Constitutional Accord signed by Québec on April 16, 1981 whereby Québec would not be subject to any amendment which would diminish its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation.

3. Given that a Charter of human rights and freedoms is already operative in Québec, the Charter of Rights and Freedoms to be entrenched in the Canadian Constitution must limit itself to:

(a) democratic rights;
(b) use of French and English in federal government institutions and services;

(c) equality between men and women, provided the National Assembly retains the power to legislate in matters under its jurisdiction;

(d) fundamental freedoms, provided the National Assembly retains the power to legislate in matters under its jurisdiction; and

(e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority is already the most privileged in Canada.

4. Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.

The said motion was then adopted on the following division:

Yeas: 70 Nays: 38 Abstentions: 0

Source: *Votes and Proceedings of the National Assembly of Québec*, 1 December 1981, No. 12, pages 143-145.

Decision of the Cabinet

16 April 1997

Subject: The 15th anniversary of the coming into force of the *Constitution Act, 1982*

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982;

WHEREAS this Act was adopted without the consent of the Québec National Assembly;

WHEREAS this Act has curtailed the powers and rights of Québec and its National Assembly;

WHEREAS this Act does not recognize Québec's right of veto in respect of constitutional amendments nor a right of withdrawal with reasonable and compulsory compensation;

WHEREAS this Act has unilaterally breached the pact of 1867 concluded between two founding peoples and does not recognize the implications arising from the existence of the Québec people;

WHEREAS in 1990 the Meech Lake Accord concluded in 1987 in order to reintegrate Québec into the Canadian Constitution became null and void;

WHEREAS the multilateral constitutional amending formula stipulated in the *Constitution Act, 1982* was, as a result, discredited;

WHEREAS another attempt at constitutional reform failed in 1992 with the rejection of the Charlottetown Accord during referendums held in Québec and elsewhere in Canada;

WHEREAS pursuant to section 49 of the *Constitution Act, 1982*, the Prime Minister of Canada was to convene within 15 years of the coming into force of this Act, a constitutional conference assembling the provincial premiers and himself with a view to re-examining the constitutional amending formula;

WHEREAS the Prime Minister of Canada deems this obligation to have been fulfilled at the Federal-Provincial Conference of First Ministers held in Ottawa on July 20 and 21, 1996;

WHEREAS the Québec government has not at any time adhered to the *Constitution Act, 1982*;

WHEREAS the renewal of Canadian federalism in keeping with Québec's aspirations consequently no longer seems possible;

WHEREAS the Québec people, in giving its opinion on sovereignty in 1980 and 1995, democratically expressed its right to determine on its own its political status;

The Cabinet has decided:

1. to reiterate that the *Constitution Act, 1982* is unacceptable to Québec;
2. to reiterate that the Québec people is free and capable of assuming its destiny and development and that it is incumbent upon it to determine independently and democratically its political status.

Source: Conseil des ministres, Decision 97-092, 16 April 1997.

Constitutional justice

It is impossible to contemplate contemporary democracy from the standpoint of its principles and functioning without a mechanism independent of the electoral process that curbs political power. In a number of democracies, this process has taken the form of jurisdictional control over legislation, i.e. the power accorded judges or a specialized court to invalidate a statute that oversteps the Constitution.

In Canada and Québec, constitutional justice has been one of the central themes of political life. The Constitution Act, 1982 has vested in the Canadian judicial system overall, over which the Supreme Court presides, control over statutes with regard to a constitutional charter of rights and freedoms. One little-known facet of the 1982 reform is that Québec's exclusion from the preparatory talks may have prevented a noteworthy — indeed, necessary — debate on an appropriate form of constitutional justice to be established in Canada. As a rule, there are two competing models in this respect.¹ First, there is the American model, which entrusts such control to the regular justice system; it may take several years for cases to reach the Supreme Court. Second, there is the European model, originally conceived by the legal theoretician Hans Kelsen, who reserves this control instead for a specialized court, separate from the

¹ Dominique Rousseau, *La justice constitutionnelle en Europe*. Paris: Montchrétien, 1996, 158 pages.

courts of law. The form of constitutional justice adopted in Canada in 1982 is similar to the American model, but not identical to it. Unlike the U.S. Supreme Court, the Supreme Court of Canada exercises a unitary jurisdiction, which covers all matters, not strictly litigation at the federal level. The Canadian courts may rule on abstract questions through the so-called procedure of reference to the court, a legal procedure, which, as the Privy Council in London, then the highest court in the land, recognized at the beginning of the century, is not, strictly speaking, a judicial function.

During the 1960s, there was widespread debate on constitutional justice in Canada. Successive Québec governments favoured enshrining human rights in a constitutional charter, and each in turn insisted on the principle of respect in the charter for Québec's legislative jurisdiction and that it be allowed to adopt its own charter of rights, the only one that should prevail over its laws. Québec also advocated the adoption in Canada of a system of constitutional justice based on the European model.² In this respect, Québec governments reiterated the recommendations of the Tremblay Commission of 1956, which examined Kelsen's writings and followed the example of the Karlsruhe constitutional tribunal set up in West Germany in 1949.³ Jurist Jacques-Yvan Morin took up this idea,⁴ which was also adopted in 1969 by the States-General of French Canada, one of whose resolutions advocated that Québec establish its own constitutional court, to oversee constitutional and electoral legality. In a booklet published in 1978, federal Justice Minister Otto E. Lang referred to the European model of controlling legislation.⁵ However, following a cursory discussion, he preferred the American model. The notion of European-style jurisdictional control was poorly received in English Canada and was hardly examined seriously when the Constitution was repatriated in 1981-1982. In light of the enormous power vested in judges by this reform and the tendency for governments to politicize issues

² Gouvernement du Québec, Secrétariat aux affaires inter-gouvernementales canadiennes, *Les positions traditionnelles du Québec en matière constitutionnelle 1936-1990*, November 1991, 79 pages.

³ Royal Commission of Inquiry on Constitutional Problems, *Report*, Volume II, 1956, 336 pages, page 105.

⁴ Jacques-Yvan Morin, "A Constitutional Court for Canada" (1965), *Canadian Bar Review*, 545; by the same author, "Le Québec et l'arbitrage constitutionnel", (1967), *Revue du Canadian Bar Review*, 608.

⁵ Government of Canada, *La réforme constitutionnelle. La Cour suprême du Canada*, 1978, 13 pages. See also Government of Canada, Pierre Elliott Trudeau, *La constitution canadienne et le citoyen*, Queen's Printer, 1969, 87 pages.

referred to the courts, political scientist Peter H. Russell believes that this idea, which appeared incongruous to a number of observers prior to 1982 was, perhaps, better suited than it seemed to Canada.⁶ Below is an excerpt from one of the preliminary proposals prepared by the Johnson government and submitted in July 1968 to the secretariat of the Constitutional Conference.

Working paper submitted by Québec to the Continuing Committee of Officials on the Constitutional Conference

17 July 1968 (excerpts)

Proposal

Subject: IV – The legal system
Constitutional court

It would be advisable for the Constitution to make provision for a constitutional court, whose composition and jurisdiction it would establish. At least two-thirds of the judges of this court should be appointed by the State governments.

Comment

1. In any federative system, the court that interprets the constitution in the last resort plays the role of an arbitrator between the two levels of government. For this reason, it is necessary for the constitution itself to establish the court's composition and jurisdiction, as is the case in most federations.
2. The constitutional court should obviously have jurisdiction over the interpretation of the Canadian Constitution. This jurisdiction should be exclusive and should automatically cover all constitutional issues. Should this procedure be adopted, provision should also be made to obtain the court's opinion by means of references.
3. The constitutional court could also be empowered to examine certain other specific questions, for example, the protection of the constitutional rights of citizens or disputes between governments.

⁶ Peter H. Russell, "Constitutional Reform of the Judicial Branch: Symbolic vs. Operational Considerations," (1984), *Canadian Journal of Political Science*, 17, pages 227-252.

4. The composition of the court could be as follows: four judges appointed by the federal government, one judge appointed by the Atlantic States (jointly or in turn), three judges appointed by Québec, three appointed by Ontario, one appointed by the Prairie States (jointly or in turn), and one appointed by British Columbia, for a total of 13 judges.
5. Once the judges were appointed, they would sit on the bench until they reached retirement age. The dismissal of a judge would demand joint action by the federal Parliament and the legislative assembly of the State that appointed the judge or from which the judge originates.
6. A conflict involving only the federal government and a single State government should be judged by a bench made up of equal numbers of judges appointed by the two parties.

Presented by the Québec delegation
July 24, 1968
[OUR TRANSLATION]

Source: Gouvernement du Québec, *Document de travail, propositions pour la révision constitutionnelle*, ministère des Affaires intergouvernementales, July 17, 1968.

Right of the Québec people to self-determination

*The expression “the right of peoples to self-determination” reflects principles that are at once legal and philosophical. Historically, its origins can be traced to the French Revolution and the emancipation of nations that occurred in Europe in the 19th century. The right of peoples to self-determination implies the principle of nationalities and the democratic idea. It assumes that the people concerned must decide the creation of new States. Moreover, the population of each State is entitled to freely choose its political system.*¹

*From a philosophical standpoint, the self-determination of peoples can be conceived as an extension of individual freedoms. This is the thesis adopted by Raymond Aron who, in his celebrated *Essai sur les libertés*, wrote that: “the freedom of*

peoples can be deduced, by analogy, from individual freedom [...].” [OUR TRANSLATION] Individual and collective freedoms go hand in hand with each other to the extent that the former are exercised within the framework of a community, which must also be perceived as free, i.e. “not dependent on a State deemed to be foreign.”² [OUR TRANSLATION]

The principle of self-determination has been reflected in a number of legal and institutional issues. It was apparent in the 14 points that President Wilson posed at the end of World War I as the underlying principle of lasting peace. Paragraphs 2 and 55 of article 1 of the 1947 Charter of the United Nations and two international human rights covenants adopted by the UN General Assembly in 1966 refer to the principle, not to mention several other resolutions adopted by the General Assembly.

In Québec, the notion of the self-determination of the Québec people appeared in the wake of the 1960s. It would be unfair to conclude that there was no debate on self-determination in Québec in the course of its political history in the 19th and early 20th centuries. In their Ninety-Two Resolutions of 1834, the parliamentarians of Lower Canada demanded the right of the representatives of the people of the colony to freely amend the Constitution, and the Parti rouge of Antoine-Aimé Dorion, by denouncing in 1865 the lack of legitimacy of the proposed confederation because of the absence of prior public consultation, hardly used expressions that would be common in the 20th century. However, the principle of self-determination was already beginning to take root.

I have assembled in this section a series of statements and parliamentary documents from the prime ministers of Québec, the National Assembly or specific representative institutions such as the States-General of French Canada. I may have overlooked numerous other statements. The selection presented is not exhaustive. While the picture may be incomplete, it nonetheless reveals the continuity of a principle that has regularly been confirmed in Québec by its elected representatives and the diversity of circumstances in which it has been confirmed. Various expressions have been used in Québec to designate the right of the Québec people to self-determination, e.g. the right of the Québec people to decide on its future, its right to self-determination, the freedom of Quebecers to assume their destiny, to determine their

¹ See Patricia Buirette, “Autodétermination” in Olivier Duhamel and Yves Meny (directors), *Dictionnaire constitutionnel*. Paris: Presses universitaires de France, 1992, page 56.

² Raymond Aron, *Essai sur les libertés*. Paris: Calmann-Lévy, 1965, page 219.

political status and ensure their economic, social and cultural development.

Daniel Johnson, leader of the Union Nationale and Prime Minister of Québec from 1966 until his death in September 1968, was one of the first Québec politicians to embrace the notion of self-determination. While he was in the Opposition, he began to study the history of Québec and Canada. He attempted to find a middle ground between the modernity that Québec society was striving to achieve and faithfulness to the past and Québec's original vocation as a nation. In 1965, he published *Égalité ou indépendance*, a manifesto in which he perceived the emancipation of the Québec nation within the Canadian federal State as a consequence of its right to self-determination. In the manifesto, he wrote:

"For nations and for individuals, there are basic freedoms for which no one must beg and which are not subject to any compromise whatsoever or to any haggling.

"The right to self-determination for the Canadian nation is of this order. It is a collective heritage that I regard as having been acquired once and for all and that I will never agree to stake in any negotiation.

"What we want is more powers than those granted by the Constitution of 1867.

"What we want, in fact, is the right to decide by ourselves or to have an equal say in decision-making in all areas that concern our national life."³ [OUR TRANSLATION]

Once his party came to power in 1966, Daniel Johnson had an opportunity to reiterate his ideas on Québec's self-determination. The day after General de Gaulle's celebrated declaration at City Hall in Montréal on July 24, 1967, Prime Minister Johnson published a press release, excerpts from which are presented below, commenting on the French President's "Vive le Québec libre!" According to Daniel Johnson, the President "was thus repeating, in his own words, the ideas expressed on many occasions by recent Québec governments. He has acknowledged this conviction, which is becoming increasingly widespread among Quebecers, that they are free to choose their destiny and, like all peoples of the world, they possess the unquestioned right to self-determination and to freely determine their economic, social and cultural development." [OUR TRANSLATION]

In July 1968, senior public servants in the Québec government submitted to the Secretariat of the Constitutional Conference then being organized a document setting out a series of amendments to the Canadian Constitution, one of which called for recognition of the "natural right of nations and peoples to self-determination."

General de Gaulle's visit drew considerable attention to the notion of self-determination. The States-General of French Canada held in November 1967 further clarified the notion. A comment is called for on the States-General, which are unique representative institutions in Québec's political history. Never before had such an assembly of representatives of civil society in Québec and French Canada convened. In 1672, Governor Frontenac convened the States-General of New France, an investiture ceremony that was not of great importance to the government of the colony. The States-General of 1967 had nothing in common with the ancien régime. It was a popular assembly created spontaneously by intermediate bodies and associations, which, without claiming to replace the Québec National Assembly as a body that was representative of Québec society, established itself as a deliberative assembly "with a view to delineating and expressing the will of the French-Canadian people on its political and constitutional future." The idea of the States-General of the "French-Canadian nation" was launched in 1961 and came to fruition in March 1966, when a large number of associations and civil institutions in Québec and in the French-speaking community outside Québec agreed to their organization. In September 1966 and in April 1967, delegates were elected to represent the regions of Québec and the French-speaking communities in Canada. At the national meeting in November 1967, over 2400 delegates examined a sweeping program of reform of the nation's civil and political institutions.

The assembly opened on November 23, 1967, with a speech by Jacques-Yvan Morin, then a law lecturer, who, from the outset, associated the holding of the States-General with self-determination. "Here," he said, "we discover that there is an even broader freedom that no one can take from us: our right as a people to self-determination, to choose the political system that best suits our mentality and aspirations. We are among the last peoples in the world to integrate a major current of contemporary history [...]"⁴ The next day, the General Assembly examined a proposed preliminary declaration on the

³ Daniel Johnson, *Égalité ou indépendance*. Montréal: Les Éditions de l'Homme, 1965, page 120.

⁴ "Les États généraux du Canada français," *L'Action nationale*, Vol. 57, 1968, page 14.

right to self-determination that stated that: (1) French Canadians constitute a nation; (2) Québec constitutes the national territory and the fundamental political environment of this nation; (3) the French-Canadian nation has the right to self-determination and to freely choose the political system under which it wishes to live. The vote was preceded by a speech by François-Albert Angers in which he asked the Assembly to proclaim the existence of the French-Canadian people, which has “all the sociological traits necessary to be recognized as a nation.” The Québec delegates voted massively in favour of the declaration. However, delegates from Acadia, Ontario and the western provinces were divided. Self-determination inaugurated the deliberations of the States-General and also concluded them. At the national meeting in March 1969, the Québec delegates massively approved the proposal for a written Québec constitution confirming the right of Quebecers to self-determination.

The States-General reflected a change in political discourse in Québec, which was a harbinger of future debate. At the beginning of the meetings, the delegates deliberated on the right to self-determination of the French-Canadian people, in respect of which Québec forms the national territory and the basic political environment. The term “nation” was taken to mean a social group sharing a common language, culture, or even a religion. However, at the conclusion of the meetings, another concept came to the fore, whose term of reference from then on was the Québec people, designating the entire population of Québec, regardless of language or national origin.

Self-determination perceived as a basic right or a historic principle in the late 1960s found practical expression in a referendum held in May 1980 on the sovereignty-association project put forward by the Parti Québécois government of René Lévesque elected in November 1976. The government asked the Québec people to give it a mandate to negotiate with the federal government proposing an international association linking Canada and Québec as sovereign States in a common market modelled after the European Economic Community (EEC) of the time. Québec voters defeated the referendum with a 60% majority. Immediately after the May 20, 1980 referendum, the Trudeau government announced that it intended to resume talks with the provinces with a view to repatriating the Canadian Constitution. It is against this backdrop that Prime Minister Lévesque made the declaration on June 11, excerpts from which appear below. While acknowledging the outcome of the referendum, Mr. Lévesque noted that, through the

referendum, “Quebecers exercised for the first time their right to self-determination.” Clear recognition of this right by political stakeholders in the rest of Canada and the international community “is the most valuable achievement of the Québec referendum.” As a distinct national community, Québec may freely choose its constitutional status, i.e. to democratically decide to adhere to federalism or to leave the federation.

We all know what happened next. In 1982, the federal government, with the support of nine provinces, paid no heed to Québec’s opposition, and proceeded to reform the Canadian constitutional order. The reform marked the triumph of a special conception of the Canadian State, which excluded one of the components of the federal pact of 1867 and passed over in silence the exercise in self-determination carried out in May 1980. In 1985, the Liberals under Robert Bourassa came to power. A series of talks began that concluded with the Meech Lake Accord in June 1987, intended to fairly redress Québec’s loss of status and powers in 1982. However, the agreement stalled when all of the provinces failed to ratify it within three years, as stipulated by the Constitution. In a declaration made on June 22, 1990 in the National Assembly (reproduced below), Prime Minister Bourassa drew a lesson from this failure: “English Canada must understand very clearly that, whatever is said and whatever is done, Québec is now and will always be a distinct society, free to and capable of assuming its destiny and development.” [OUR TRANSLATION]

The failure of the Meech Lake Accord compelled the Bourassa government to redefine its political agenda. Although Mr. Bourassa was attached to Canadian federalism, he could not resume talks with the other governments with respect to the same proposals. In September 1990, he convened the National Assembly with a view to setting up an extraordinary parliamentary commission, made up of Québec elected officials and representatives of ordinary Quebecers, which was asked to make recommendations on the political avenues open to Québec in the wake of the failure of the Meech Lake Accord. During debate on the adoption of the legislation establishing the commission, Québec Minister of Justice and Minister for Intergovernmental Affairs Gil Rémillard commented on one of the whereas clauses of the legislation, which asserted the right to self-determination of the Québec people. (The Minister’s declaration and the preamble to the Act appear below.) According to Mr. Rémillard, Québec’s right to self-determination was reflected in all of the political policies of Québec governments since the Lesage

government (1960-1966). Self-determination is postulated on the conviction that Quebecers form a people united by history, language and culture and adherence to the values of a free, democratic society and that they are, ultimately, the masters of their political status.

Following the general election in September 1994, the Parti Québécois headed by Jacques Parizeau came to power. The Prime Minister promptly announced his determination to hold a referendum on Québec sovereignty. In September 1995, he tabled in the National Assembly draft legislation calling for Québec to become a sovereign State once an offer of political and economic partnership had been made to the rest of Canada. The preamble to the legislation contained a “declaration of sovereignty” reiterating the freedom of the Québec people to choose its future (excerpts are reproduced below). The October 1995 referendum divided Québec voters almost evenly, with a slim majority rejecting the draft legislation on Québec’s future. Jacques Parizeau resigned in January 1996 and the founder and leader of the Bloc Québécois, Lucien Bouchard, took over as leader of the Parti Québécois and the government. Québec self-determination continued to dominate debate, as the two motions adopted by the National Assembly in May 1996 and 1997 on this question reveal (the motions are reproduced below).

In September 1996, the federal Cabinet referred to the Supreme Court three questions concerning Québec’s accession to sovereignty (unlike the United States and Australia, Canada does not, in principle, strictly separate powers that prevent the courts from fulfilling non-judicial roles). On August 20, 1998, the Supreme Court made public its advisory opinion.⁵ The Court delineated by interpretation principles implicit in the Constitution and expressed the opinion that it does not in itself prohibit the secession of a province, although it does not authorize a unilateral act of secession. The Court acknowledges that a referendum vote in favour of sovereignty gives the political project democratic legitimacy, which the rest of Canada is obliged to recognize. Moreover, if a clear majority of Quebecers vote in favour of this option, the Constitution imposes on the rest of Canada the obligation to enter into negotiations with the Québec government focusing on the very conditions governing accession to sovereignty. The Supreme Court maintains that such negotiations are the responsibility of the political stakeholders and are not subject to judicial review. However, the Court adds that the National Assembly or the Québec government

could not invoke the right to self-determination of peoples recognized under international law to unilaterally declare Québec’s sovereignty following a favourable referendum vote. The Supreme Court does not preclude, in the event that negotiations reach a stalemate, recognition by the international community of the legal status of a unilateral declaration of independence.

It should be noted that the Québec government refrained from appearing before the Court with respect to the reference, since the question of Québec’s accession to sovereignty is essentially a political question that it is incumbent upon the Québec people and its political institutions to decide and on which the courts may not render a conclusive opinion. While the opinion handed down by the Supreme Court is not binding, Québec Prime Minister Lucien Bouchard believes that the Court recognizes in its opinion the democratic legitimacy of sovereignty and set out a process respecting accession to sovereignty in keeping with the process advocated by his government.⁶

Declaration by Prime Minister Daniel Johnson on French President Charles de Gaulle’s visit to Québec

[...] General Charles de Gaulle, President of the French Republic, received an unprecedented, unambiguous triumphant welcome from Quebecers. The Québec government is pleased to have invited him to visit us and his stay here will be unforgettable.

During his visit, General de Gaulle noted the progress that a modern Québec has made. He perceived as few before him the spirit that animates this renewal and he spoke of emancipation, of Québec’s taking charge of its destiny and of a free Québec. In his own words, he reiterated ideas that recent Québec governments have expressed repeatedly. He paid tribute to this conviction, which is becoming increasingly widespread among Quebecers, that they are free to choose their destiny and, like all peoples of the world, that they possess the unquestionable right to self-determination and freely choose their political status and freely ensure their economic, social and cultural development. He noted the undeniable fact that Québec has embarked upon changes through

⁵ *Re Secession of Québec*, [1998] 2 R.C.S. 217.

⁶ Notes for an introductory statement by Québec Prime Minister Lucien Bouchard in the wake of the *Reference to the Supreme Court of Canada on questions on secession of Quebec*, Québec City, August 21, 1998.

which it is democratically becoming more and more itself. [...] [OUR TRANSLATION]

Source: *Le Devoir*, July 29, 1967.

States-General of French Canada – Preliminary declaration on the right to self-determination

National meeting held at Place des Arts in Montréal from November 23 to 26, 1967

Speech delivered at the General Assembly

November 24, 1967

François-Albert Angers

[...] At this solemn moment in our history, the first gesture of this assembly must be to formulate its reason for being and underlying principles. The States-General of French Canada are deliberating on the periphery of the Constitution and in order to reform, if need be, the Constitution. Their mandate is derived directly from a popular ballot and their significance is drawn from their very organization. It is incumbent solely upon the States-General to say what they are and what they wish to be. We must say so explicitly in order to give our future deliberations their full meaning. [...]

In the course of these 200 years, however, [French Canadians] have constantly and with growing intensity asserted their determination to survive as a society, with its own language, institutions and laws. The conqueror of the time gradually recognized this demand through a succession of constitutional regimes in which it has broadened the measure of freedom. [...]

However — the convening of these States-General, which seem so unusual to some observers, is based on this basic given — the French-Canadian people have never been consulted on the political regime under which they were to live. Always, as was the case in 1867, their constitutional regime was provided at the conqueror's discretion. Since 1867, the French-Canadian people has been called upon to participate more actively and tangibly, although it always depends on the will of the English-speaking majority, in the political decisions made under the existing constitutional framework. However, the French-Canadian people has been compelled to first submit to this framework, whether it likes it or not, and, indeed, to submit to changes and transformations according to the interpretations given to them by the English-speaking majority.

If this Assembly has been convened under the name States-General and according to procedures that allow it to use this name, it is because in 1967 the French-Canadian people is still in the position of demanding its right to be consulted on the political regime under which it lives and that, from now on, it intends to be consulted in this respect. [...]

This is not a congress of militants from any ordinary group or association of groups. We are the States-General of French Canada, i.e. a vast national assembly of the French-Canadian people, a body of delegates elected by voters mandated by a group of local and national associations with a view to clarifying and expressing the will of the French-Canadian people on its political and constitutional future. [...]

[...] [O]ur States-General are unquestionably the most systematic, comprehensive and successful ever to have been attempted to set up a veritable National Assembly of the French-Canadian people with a view to establishing its constitution. All territories, social classes and institutions are represented here, regardless of the tendencies of groups, parties or interests and according to a complex voting method that gives expression to all opinions.

Our first gesture must, therefore, be to express who we are, why we are here and the facts and principles that underpin our legitimacy. However, we must carefully avoid anticipating in any way whatsoever the very decisions that must emanate from the Assembly and which the latter must reach after careful deliberation. Such are the meaning, scope and very limits of the resolution that I have the honour of proposing to you on behalf of the General Board [...].

What does this “declaration” say? It notes that there is a French-Canadian people whose existence we officially proclaim today and in its own name. The declaration emphasizes and, in so doing, justifies the convening of the States-General, that this people has all of the sociological traits necessary for its national character to be recognized and, subsequently, according to the same universally recognized legal principles, the right to self-determination. Moreover, the declaration notes that this right is not for the French-Canadian people a right that circumstances, such as dispersal in a non-defined territory, render platonic and inoperative. To the contrary, the national home of this people is located in a territory in which it constitutes a majority and may thus aspire, if it so desires, to govern itself, in the manner that suits it. More importantly, this majority already has at its disposal a State government since it enjoys exclusive,

therefore sovereign powers, over a portion of the jurisdiction that defines Canadian sovereignty. [...]

At the beginning of this national meeting, we must first assert what is in order to define what we are. We must not say any more; we cannot say any less. It is because we are a nation in the sociological or ethnic sense of the term and thus dispose of the right to self-determination that the States-General of French Canada are a legitimate, valid institution through which to assert our will. If we deny this, there is nothing else for us to do here. However, it should be eminently clear that we are asking you to subscribe neither to independence, federalism, centralization, autonomy, special status nor associated States. We are simply asking you to proclaim our right to choose the solution that best satisfies our aspirations and needs. We are not deciding on a solution; we are deciding that we have the right to choose a solution.

However, we must not say any more. If the States-General exist, it is to make possible the expression of the national will. [...]

The States-General of French Canada, gathered in an assembly,

Having agreed

that French-Canadians constitute a people numbering nearly six million, possessing its own language, culture, institutions, history and a national will to live,

that this people, spread across Canada and concentrated above all in Québec,

that this people possesses in Québec a territory and a State whose institutions reflect its culture and mentality,

that the life and development of the French-Canadian people centres on the political authority, and economic and cultural influence of Québec,

And noted

that through the *Charter of the United Nations* demands "respect for the principle of equal rights and self-determination of peoples" (article 1, paragraph 2);

Declares that:

French-Canadians constitute a nation.

Québec constitutes the national territory and the basic political environment of this nation.

The French-Canadian nation has the right to self-determination and to freely choose the political sys-

tem under which it wishes to live. [OUR TRANSLATION]

Breakdown of the vote on self-determination

	For	%	Against	%	Abst.	%	Total
Québec	783	98	12	1	10	1	805
Ontario	58	35	92	55	16	10	166
Acadia	36	52	10	14	23	34	69
West	25	30	27	33	30	37	82

Source: "Les États généraux du Canada français, Assises nationales 1967" in *L'Action nationale*, Vol. LVII, No. 6, February 1968, pages 39-49.

Declaration by Prime Minister René Lévesque on the federal government's preliminary proposal to repatriate the Constitution

During the May 20 referendum, Quebecers exercised, for the first time, their right to self-determination. This exercise was carried out democratically and legally and was recognized as such by the rest of Canada since the Prime Minister of Canada and the premiers of several provinces were personally involved in it. It was also recognized by the international community, which took a keen interest in it.

The clear recognition of this right is the most valuable achievement of the Québec referendum. Regardless of the outcome, it is now unquestioned and unquestionable that Québec is a distinct society that may choose of its own accord, without outside intervention, its constitutional status. Quebecers may decide to remain in Canadian federalism, as they may decide democratically to leave it if they believe that this system no longer satisfies their aspirations and needs. This right to control one's national destiny is the most basic right that Québec society possesses.

The exercising of this right to self-determination is a powerful component of constitutional change. Already, it is the starting point of this round of negotiations. It has spawned numerous comments and commitments from Canadian politicians with respect to Québec's place in the confederation. It has heightened public awareness in the rest of Canada to the urgency of modifying the existing system. It has played a triggering role.

Its role would be decisive if the current negotiations fail. At the time of the referendum, Quebecers did not adopt federalism once and for all but simply gave it one last chance to renew itself in

such a way that Québec obtains the broader powers it needs to ensure its development and affirmation of itself as it sees fit. It will up to Quebecers to judge the outcome of the current negotiations and learn a lesson from them.

There is no question of relinquishing in any way, shape or form this valuable right to self-determination. Moreover, I fully believe that Quebecers would irrevocably repudiate any of its leaders who wished to undermine this recognized right. To the contrary, it must be acknowledged that, from now on, any new constitutional arrangement must explicitly recognize Québec's right to self-determination. There cannot be in this respect a permanent, perpetual commitment: Quebecers will always want to maintain their right to decide on their constitutional destiny. [...]

In light of the proposed declaration of principle put forward by the federal government, there would be only one nation in Canada and only one sovereignty. The federal tie would be indissoluble. Québec would not constitute a distinct society having the right to freely choose, without outside intervention, its national destiny. For us and, we believe, the vast majority of Quebecers, Canada is made up of two equal nations: Québec is the homeland and the fulcrum of one of these two nations and, since it possesses all of the attributes of a distinct society, it enjoys an inalienable right to self-determination. There are two opposing visions of the nature of Canada, visions which have often collided in the past and which are at the very origin of the Canadian constitutional crisis. [...] [OUR TRANSLATION]

Source: *Le Devoir*, June 11, 1980.

Declaration by Prime Minister Robert Bourassa on the rejection of the Meech Lake Accord

Québec National Assembly
22 June 1990

Robert Bourassa, Prime Minister of Québec

[...] From a political standpoint, however, it must be noted that, at the time of adjournment of this first part, the Meech Lake Accord has not been ratified. Therefore, the Québec resolution that was adopted three years ago less a day no longer has any legal existence. On behalf of all Quebecers, I wish to express my deepest disappointment, which can be explained by all of the efforts made by different governments over the past 10 or so years.

Ten years ago, following the May 20, 1980 referendum, the Québec government at the time, headed by Mr. Lévesque, made several attempts to reintegrate Québec into [the] Canadian Constitution. The government displayed, to reiterate the expression used by the Leader of the Opposition this afternoon, considerable flexibility, but with an obviously disappointing result, since Québec was excluded from the Canadian Constitution.

In 1985, we proposed to English Canada conditions that were deemed by everyone to be moderate and reasonable. On three occasions, we reached agreement on the entire range of these conditions. [...]

On June 9 of this year, we once again signed an agreement. All of the premiers promised to do everything possible to have the resolution adopted before June 23. It should be noted that two provinces have not done so and have no intention of doing so.

In 1987, an agreement was reached. Following three changes of government, the provinces failed to live up to the commitment they made in signing the agreement. Once again, in 1990, two provinces that committed themselves to doing everything necessary to adopt the resolution failed to do so. Until 1985, people asked: "What does Québec want?" We clearly indicated Québec's demands. [...]

Since 1985, the question has been: "What does Canada want?" We are still awaiting Canada's response to this question. Mr. President, English Canada must understand very clearly that, whatever is said and done, Québec is today and always will be a distinct society, free and capable of assuming its destiny and development. [...]

[OUR TRANSLATION]

Source: *Débats de l'Assemblée nationale du Québec*, 1990, Vol. 31, p. 4134.

Debate on the adoption of the Act to establish the Commission on the Political and Constitutional Future of Québec

Québec National Assembly
4 September 1990

Gil Rémillard, Minister of Justice and Minister for Intergovernmental Affairs

Mr. President, this is not the first time that this Chamber has voted on legislation to study the future of Québec. During the weekend, I leafed through the

reports of the Royal Commission of Inquiry on Constitutional Problems, the Tremblay Commission, which was established by this Assembly through legislation assented to on February 12, 1953, on the initiative of the Duplessis government. [...]

I leafed through these reports, Mr. President, and concluded that, from a political, social, cultural and economic standpoint, the situation was in many ways very similar to the situation we are now experiencing. [...]

We did not start talking about reforming our institutions only recently. We have not discussed Québec's place in the Canadian federation only recently, because, Mr. President, from Duplessis' "Spoils" to Jean Lesage's "Masters in our own house" to Daniel Johnson's "Equality or independence", to Robert Bourassa's "cultural sovereignty" to René Lévesque's "sovereignty-association" to Robert Bourassa's "distinct society", there is, with certain nuances and particularities that we can attribute to each political option, the same foundation. Specifically, this foundation is the search by Québec for its autonomy to express fully its specific nature — its cultural, social and political uniqueness — and its economic uniqueness, too, the possibility for Quebecers to fully, freely express what they are and to share according to what they can be and what they may have in common with the other Canadian provinces.

Mr. President, I also read during the weekend Volume I of the book entitled *À la recherche du Québec* by Professor Léon Dion, the eminent political scientist from Laval University. I found several lines in the book particularly touching and would like to quote them in this Chamber. Professor Dion says: "Despite the sadness that clouds the faces of so many young people, adults and elderly people, I believe in the future because I believe in all of them. From so many broken dreams over the past 30 years have arisen at least two achievements whose scope we must not underestimate. First, the individual has freed himself from numerous inhibiting forms of domination and Québec as a whole has emerged from the protective cocoon that was paralyzing it and has opened itself to the world."

"Feelings of anxiety or despair in light of their present and future, from Jacques Cartier and his companions who planted a cross in Gaspé in 1534 in the name of the king of France and the Church, to those who were conquered in 1760, who experienced the events of 1837-1838, 1867, 1960, 1976 and 1980 and other similar events make up the axes of Québec

history and form so many layers of the identity of Quebecers as a nation." [OUR TRANSLATION]

Mr. President, I firmly believe that Quebecers form this nation, together we form this society that wishes to express what it is by sharing what we have in common. We are men and women who have, through moral and material interests, deep-seated ties that unite us through history, language, culture, the hope for a better life, a definition of a free, democratic society that respects rights and basic freedoms.

Mr. President, when we examine the history of Québec, we examine this difficult progression but a progression of tenacity, strength and conviction that has enabled our parents, our grandparents and our ancestors to form this society of which we can be proud. We still perceive this line of continuity, this line that has enabled us to express in often very difficult circumstances what we are and it is in this context that we must situate this Act that will create a broadened parliamentary committee. Of course, we must understand this context first and foremost in light of the failure of the Meech Lake Accord. However, the failure of the Meech Lake Accord has become a victory for Québec. [...]

[...] I genuinely believed that with the five most reasonable conditions that we could demand we could make the *Constitution Act, 1982* acceptable and allow Québec to become a full-fledged partner in the Canadian federation. However, Mr. President, until the last minute, I thought that the premiers, that the governments, that the provincial legislatures would accept this agreement since it was signed officially on at least two previous occasions, in June 1987, first at Meech Lake, in May 1987, you will recall, then in June 1987. [...]

Three years later we witnessed the failure of Meech, the failure of a system, the failure of the *Constitution Act, 1982*. We must understand each other, Mr. President, the failure of Meech will have extremely serious consequences for the future of this country, because it makes the 1982 Constitution almost inapplicable. As Quebecers, we have been trapped by the 1982 Constitution, we have been trapped as the Native peoples have been trapped. [...]

Mr. President, we are now in a situation where we must adopt the necessary means to express what we are in a context that will allow us to protect what has been achieved and ensure that our future reflects all of the history that is our heritage and which enables us to express with determination what we want to do.

I said earlier, quoting Professor Dion, that Quebecers are a nation and that means, Mr. President, that, as a society, a nation and a people, we can freely express what we are. I refer to the first whereas clause of the Act that we are discussing today, Mr. President. The first whereas clause of this Act is particularly eloquent, and I quote: "WHEREAS Quebecers are free to assume their own destiny, to determine their political status and to assure their economic, social and cultural development."

Mr. President, I believe that in this first whereas clause we have the very foundation of the existence of this commission that we are establishing today. Quebecers are free to ensure their own destiny. No one else is going to tell us what we must do. Another institution is not going to tell us what we must do, as members of the Québec National Assembly. No prime minister may interfere in what we decide to do. [...]

This is a sound commission that will enable us, as objectively as possible, each of us with our own political options, but as objectively as possible and with as much openness as possible, to hear experts, but, above all, to hear Quebecers say how they perceive the situation, how they see Québec's future, and what we should do. As parliamentarians, our role is to inform the public. Our role is to discuss in order to be able to inform the public as adequately as possible. However, it is up to the people to decide. It is the people who are sovereign. It is the people, ultimately, who will decide on Québec's status to determine its future. [...][OUR TRANSLATION]

Source: *Débats de l'Assemblée nationale du Québec*, 1990, Vol. 31, pp. 4331-4334.

The Act to establish the Commission on the Political and Constitutional Future of Québec

National Assembly of Québec
4 September 1990

WHEREAS Quebecers are free to assume their own destiny, to determine their political status and to assure their economic, social and cultural development;

Whereas Quebecers wish to play an active part in defining the political and constitutional future of Québec;

Whereas the Constitution Act, 1982, was proclaimed despite the opposition of the National Assembly;

Whereas the 1987 Agreement on the Constitution, the aim of which was to allow Québec to become a party to the Constitution Act, 1982, has failed;

Whereas it is necessary to redefine the political and constitutional status of Québec;

Whereas Québec has already demonstrated its respect for democratic values and individual rights and freedoms;

Whereas Québec has recognized that Quebecers wish to see the quality and influence of the French language assured and to make it the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;

Whereas Québec intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the rights and institutions of the English-speaking community of Québec;

Whereas Québec recognizes the right of the Amerinds and the Inuit of Québec to preserve and develop their specific character and to assure the progress of their communities and that it considers the contribution of the cultural communities to be of prime importance for the development of Québec;

Whereas Québec supports French-speaking communities outside Québec and contributes to the international French-speaking world;

Whereas the economy of Québec is mature and vigorous and Quebecers clearly wish to see its development and growth assured, while respecting the demands of both market globalization and social justice;

Whereas in consequence it is expedient to create a special Commission to examine and analyse the political and constitutional status of Québec; [...]

Source: *Act to establish the Commission on the Political and Constitutional Future of Québec*, S.Q., 1990, c. 34.

The Act respecting the future of Québec

National Assembly of Québec

Bill 1

Introduced by Mr. Jacques Parizeau, Prime Minister

7 September 1995

Declaration of Sovereignty

[...] At the dawn of the 17th century, the pioneers of what would become a nation and then a people rooted themselves in the soil of Québec. Having come from a great civilization, they were enriched by that of the First Nations, they forged new alliances, and maintained the heritage of France.

The conquest of 1760 did not break the determination of their descendants to remain faithful to a destiny unique in North America. Already in 1774, through the Quebec Act, the conqueror recognized the distinct nature of their institutions. Neither attempts at assimilation nor the Act of Union of 1840 could break their endurance.

The English community that grew up at their side, the immigrants who have joined them, all have contributed to forming this people which became in 1867 one of the two founders of the Canadian federation. [...]

We, the people of Québec, declare that we are free to choose our future. [...]

Source: National Assembly of Québec, Bill 1, *Act respecting the future of Québec*, 7 September 1995.

Motion on the right of the Québec people to assume its own destiny

National Assembly of Québec

22 May 1996

This motion reads as follows:

THAT the National Assembly reaffirm that the people of Québec are free to take charge of their own destiny, to define without interference their political status and to ensure their economic, social and cultural development.

The motion was carried on the following vote:

Yeas: 66 Nays: 39 Abstentions: 0

Source: *Votes and Proceedings of the National Assembly of Québec*, 22 May 1996, No. 24, pages 177-178.

Motion on the October 1995 referendum and the fundamental right of Quebecers to decide on their future

National Assembly of Québec

21 May 1997

This motion reads as follows:

THAT the National Assembly demand that the men and women politicians of Québec recognize the will, democratically expressed by Quebecers in the referendum of 30 October 1995 held in compliance with the Referendum Act, thus acknowledging the fundamental right of Quebecers to determine their future pursuant to this Act.

The motion was carried on the following vote:

Yeas: 91 Nays: 0 Abstentions: 0

Source: *Votes and Proceedings of the National Assembly of Québec*, 21 May 1997, No. 104, pages 5-6.

Recognition of the rights of the aboriginal peoples

In a liberal democracy, political equality demands that citizens enjoy the same political rights and obey the same laws. Of course, this is not an inflexible principle. In a federal State, for example, the rights and obligations of citizens may vary from one federated State to another, depending on the degree of autonomy accorded each one and the desire of the voters in the States to have their own laws. The aboriginal peoples in Canada and Québec have, for a long time, made up a separate society. From the 17th to the 19th centuries, the French and English colonizers sometimes treated with the aboriginal nations occupying North America and sometimes waged war against them. The colonizers introduced into a territory that they believed was new and empty their European laws and institutions, without according the aboriginal nations any political existence. Following the Conquest in 1763, the British Crown signed numerous treaties with the Indians, from whom it wished to acquire land for the purpose of settlement. In the minds of the English generals, the treaties were not the same as the alliances signed with other sovereign nations. They were dealing with subjects of His Majesty. The colonization of public land did not always proceed in the correct manner. Much of the land was

granted to colonists without the consent of the aboriginal nations, sometimes by force of arms.

The federal union of 1867 confirmed the special status and the issues pertaining to the aboriginal peoples. The Indians and the lands reserved for them fell under the exclusive jurisdiction of the federal Parliament. The federal government placed the aboriginal tribes and the reserves under a cumbersome administration. In many ways, the status of the Indian was similar to that of a non-emancipated minor. The federal government organized down to the smallest details the civil rights of Indians, the political structure of band councils, and the management of the reserves. While they were exempt from paying taxes, Indians did not enjoy political rights such as the right to vote. However, the aboriginal peoples could put an end to this state of subjection by relinquishing their status and identity as Indians and integrating into the majority. This system of incapacitating guardianship persisted for several decades. Even today, some facets of this system persist.

In 1969, the federal government announced in a white paper its willingness to abolish this system of guardianship and to integrate the aboriginal nations into Canadian society, in the name of a liberal conception of democracy. Far from greeting this policy enthusiastically, the aboriginal nations protested to the government that they wished to maintain themselves as a people and achieve respect for their treaties. Since then, Canada has embarked upon the path of distinctive identity and pluralism. It would no longer be a question of integrating the aboriginal peoples into the dominant society. The Constitution Act, 1982 confirmed this state of affairs by sanctioning the existing and ancestral rights of the aboriginal peoples, rights which the latter may invoke before the courts to oppose the application in their territory or in respect of themselves of federal or provincial statutes, or to demand the ownership or use of a portion of the public lands that their ancestors occupied or that they were granted by treaty. Essentially, the question of the aboriginal peoples raises two problems: (1) What degree of political autonomy should be granted to the aboriginal nations and what form should aboriginal government take? (2) What is the extent of the territorial rights of each of the aboriginal nations and through what procedure should their land claims be settled? The Royal Commission on Aboriginal Peoples, set up by the federal government in 1990, devoted six years to research on these and other questions, from the standpoint of law, history, philosophy and the social sciences.

There are approximately 1 million aboriginal people in Canada, of whom 70 000 representing the Inuit nation and 10 Amerindian nations live in Québec. Less than 1% of Québec's population is of aboriginal origin, the smallest proportion of aboriginal residents in any of the provinces. Generally speaking, the economic and social situation of native peoples in Canada is hardly encouraging, although progress has been made in recent years as regards poverty, low education levels, suicide rates and high crime rates. However, as the Commission confirmed, it is in Québec that native languages and cultures are the best preserved. Unlike the other provinces, Québec has not fostered the adoption of aboriginal people outside their culture of origin. Québec Amerindians usually live on reserves or establishments administered by a band council made up of the chief and his advisors. The Inuit live in Nunavik, a vast portion of Québec's territory located north of the 55th parallel. They live in 14 towns headed by a mayor and a northern town council, whose responsibilities are similar to those in other Québec municipalities.

The Québec government exercises jurisdiction in several areas that directly affects the development of native peoples. It provides numerous public services, such as health and education, for which there is a considerable need. Moreover, it owns public lands. For this reason, the government is necessarily a party to agreements aimed at settling native land claims in its territory. In the wake of the legal proceedings initiated by the Cree and the Inuit against the James Bay hydroelectric project, the federal and Québec governments and the Cree and Inuit nations signed the James Bay and Northern Québec Agreement in 1973.

The agreement grants the Cree and Inuit the ownership and usufruct in respect of the designated territories, administered by an aboriginal regional authority with responsibility for health, education, the environment and economic and social development. In exchange for these rights and privileges, the Cree and Inuit nations have relinquished their claims in respect of the territory of Nouveau-Québec and received financial compensation. A similar agreement, the Northeastern Québec Agreement, was concluded with the Naskapis in 1978. Under the agreements, the signatory nations have resumed hunting and fishing, which are ancestral activities, broadened the teaching and knowledge of aboriginal languages and provided a broader range of public services of increasing quality.

The Québec government has gradually defined the principles governing its relations with the native peoples and formalized them. In February 1983, it adopted by decree a series of 15 principles recognizing, among other things, the aboriginal peoples of Québec as distinct nations and their right as members of Québec society to self-determination and the development of their lands. In 1985, the Lévesque government sought to sanction a number of these principles by means of a resolution in the National Assembly, which is reproduced below. The resolution adopted on March 20, 1985 recognizes the existence in Québec of 10 aboriginal nations¹ and urges the government to conclude with them agreements intended to ensure the exercising of numerous rights. In the resolution, the National Assembly reiterated its willingness to protect, in its fundamental laws, the rights recognized in these agreements. However, the government did not achieve unanimity on the motion. According to the Liberal opposition, the motion was limited to stating generalities and in no way improved the situation of Québec aboriginal peoples.

For several years, the question of the political autonomy of the aboriginal peoples has been on the agenda of all governments. Québec has undertaken negotiations with several of its aboriginal nations with a view to settling their land claims and setting up self-government. In April 1998, the Québec government made public a policy statement on native affairs in Québec. It set out a number of policy directions and principles governing native self-government in Québec.²

Motion on the recognition of the rights of the aboriginal peoples

National Assembly of Québec
20 March 1985

This motion reads as follows:

THAT this Assembly:

RECOGNIZES the existence of the Abenaki, Algonquin, Attikamek, Cree, Huron, Micmac, Mohawk, Montagnais, Naskapi and Inuit nations in Québec;

RECOGNIZES existing aboriginal rights and those set forth in The James Bay and Northern Québec Agreement and The Northeastern Québec Agreement;

CONSIDERS these agreements and all future agreements and accords of the same nature to have the same value as treaties;

SUBSCRIBES to the process whereby the Government has committed itself with the aboriginal peoples to better identifying and defining their rights – a process which rests upon historical legitimacy and the importance for Québec society to establish harmonious relations with the native peoples, based on mutual trust and a respect for rights;

URGES the Government to pursue negotiations with the aboriginal nations based on, but not limited to, the fifteen principles it approved on 9 February 1983, subsequent to proposals submitted to it on 30 November 1982, and to conclude with willing nations, or any of their constituent communities, agreements guaranteeing them the exercise of:

- (a) the right to self-government within Québec;
- (b) the right to their own language, culture and traditions;
- (c) the right to own and control land;
- (d) the right to hunt, fish, trap, harvest and participate in wildlife management;
- (e) the right to participate in, and benefit from, the economic development of Québec,

so as to enable them to develop as distinct nations having their own identity and exercising their rights within Québec;

DECLARES that the rights of aboriginal peoples apply equally to men and women;

AFFIRMS its will to protect, in its fundamental laws, the rights included in the agreements concluded with the aboriginal nations of Québec; and

AGREES that a permanent parliamentary forum be established to enable the aboriginal peoples to express their rights, needs and aspirations.

The motion was adopted on the following division:

Yeas: 66 Nays: 44 Abstentions: 0

Source: *Votes and Proceedings of the National Assembly of Québec*, 20 March 1985, No. 39, pages 216-217.

¹ An eleventh nation, the Malecite, was recognized in 1989.

² Gouvernement du Québec, Secrétariat aux affaires autochtones, *Partenariat, développement, actions*, 1998, 42 pages.

Human rights and freedoms in Québec

Human rights have been gradually recognized through legislation, jurisprudence and political custom and were enshrined in legislation adopted by the National Assembly in 1975. The idea of Québec's adopting a charter setting out these rights first emerged in the early 1960s.¹ In 1966, Daniel Johnson, then leader of the Opposition, advocated that Québec adopt its own internal Constitution and incorporate into it a charter of human rights without waiting for the reform of the Canadian Constitution. When he became Prime Minister of Québec, he reiterated this position at the federal-provincial conference held in February 1968. During the deliberations in November 1968 and August 1969 of the constitutional committee of the Québec Legislative Assembly established in 1963 by Jean Lesage, numerous parliamentarians envisaged the adoption of such a charter. In 1971, Québec Minister of Justice Jérôme Choquette asked two eminent jurists, Paul Crépeau and Frank Scott, to draft a Québec charter of human rights and freedoms. In July of that year, they submitted a draft proposal that drew inspiration from several international human rights charters, including two covenants pertaining to civil and political rights, on the one hand, and economic, social and cultural rights on the other hand. In May 1973, the *Ligue des droits de l'homme du Québec* published a proposed Québec human rights charter and launched a public awareness campaign in this respect.

The charter was finalized on October 29, 1974. The Liberal government of Robert Bourassa tabled Bill 50, the [Loi sur les droits et libertés de la personne], which essentially reiterated the 1971 draft proposal.² Québec Minister of Justice Jérôme Choquette and Leader of the Opposition Jacques-Yvan Morin figured prominently in the ensuing debate, several excerpts from which are reproduced below. The debate afforded an opportunity to discuss the issues inherent in and the philosophy underlying the Charter. Mr. Choquette pointed out that the adoption of the charter was not occurring in a void. It confirmed the existence of established rights and principles that were already an integral part of Québec legislation. The Charter reflected certain established democratic and social values in Québec, Canada and, generally speaking, the West.

However the Québec Charter did not confine itself to codifying the state of law. It "has no equivalent in the history of Canadian legislation."³ [OUR TRANSLATION] The Québec Charter covers personal rights, civil and political rights, relations between individuals and economic and social rights, in keeping with the four major groups of rights enshrined in the Universal Declaration of Human Rights of 1984.⁴ The 1975 Charter includes a general standard that prohibits discrimination. This standard prohibits the Québec government and individuals and legal entities from engaging in discriminatory practices in their contractual relationships. The Charter makes provision for recourse before the courts for individuals who have been wronged. Moreover, the courts may award them damages or exemplary damages as a means of redress. However, individuals are not left to their own resources: the Charter creates the Commission des droits de la personne, to act as an intermediary between those who are deprived of their rights and the parties who have deprived them of such rights. If mediation fails, the dispute is brought before the courts, where the Commission may take up the complainant's defence. The Commission is an independent body whose president is appointed by the National Assembly. Through its research and education programs, the Commission also promotes the principles of the Québec Charter.

While the two parliamentarians agreed on the principle of a Québec Charter, they were divided on the issue of its scope. Jérôme Choquette regarded the Québec Charter as a reflection of the liberal British parliamentary tradition, whose main principles Québec has embraced. It is for this reason that the Charter has no supralegislative scope, i.e. it does not take precedence over other statutes of the National Assembly, nor does it force legislators to make effective the economic and social rights that it stipulates. In any case, parliamentary sovereignty must be respected. However, in the opinion of Jacques-Yvan Morin, a genuine charter of rights is not an ordinary statute or a purely legal instrument. At a time when tradition, religion and community life have given way to industrial society and the modern State, human rights can be used to rebuild the social fabric. According to Mr. Morin, a charter of human rights is the ideal instrument for social construction. Contrary to Justice Minister Choquette, Mr. Morin did not believe that the British parliamentary system ex-

¹ Jacques-Yvan Morin, "Un Charte des droits de l'homme pour le Québec," (1963), 9, *McGill Law Journal*, page 273.

² [Loi sur les droits et libertés de la personne], Bill 50 (first reading), second session, 30th legislature (Québec).

³ André Morel, "La Charte québécoise : un document unique dans l'histoire législative canadienne," (1989), 21, *Revue juridique Thémis*, 1, 9.

⁴ Gouvernement du Québec, *Les droits humains : une responsabilité commune*, ministère des Relations avec les citoyens et de l'Immigration, 1998, 15 pages.

cluded one statute's taking precedence over other statutes. If a parliament is unable to bind itself with respect to legislation, it can always bind itself from the standpoint of the manner of voting. Following this debate, the Standing Committee on Institutions examined the draft legislation section by section. Amendments were made, among other things, to guarantee the right of property. On June 27, 1975, the government and the Opposition voted unanimously to adopt the legislation.

In October 1981, a parliamentary committee reviewed the Charter adopted in 1975. In the wake of an extensive consultation that it had just carried out, the government tabled Bill 86, which broadened, in particular, the right to equality: the inclusion of age, pregnancy and sexual orientation among prohibited reasons for discrimination, and the establishment of equal opportunity programs. The Charter was granted a preponderant value and enhanced with a clause to limit rights. In light of the Charter's preponderance, a statute adopted by the National Assembly may not depart from the rights and liberties stipulated in the Charter unless it expressly indicates that it is doing so. The courts subsequently recognized that this provision appears to confer on the Québec Charter a quasi-constitutional status.⁵

The Québec Charter has undergone other significant amendments. In June 1989, the National Assembly established the Tribunal des droits de la personne, which, along with the Commission des droits de la personne, is responsible for implementing the Charter. The tribunal hears cases that the Commission is empowered to launch to obtain redress with respect to an individual's rights or the application of an equal opportunity program. In 1995, the National Assembly broadened the mandate of the Commission des droits de la personne to include the protection of the rights of young people.

Québec's commitment to human rights also includes an international component. As a member State of the Canadian federation, it participates in the implementation of international agreements on human rights. Under Canadian constitutional law, the administration of agreements or treaties signed on behalf of Canada is a shared jurisdiction. A treaty concluded by the federal executive, if it is binding on the entire federation, has no immediate effect in Canadian law. Depending on whether the treaty concerns the jurisdiction of the federal parliament or

the provincial legislatures, the former and the latter must incorporate the treaty by means of legislation into their internal law. To officially, publicly recognize its contractual obligations under treaties signed in the name of Canada, the Québec government has adopted numerous orders in council.

In 1975, the federal and provincial governments agreed to establish a continuing committee of officials to oversee the implementation of two United Nations covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. They also agreed on a number of consultation and collaboration principles and procedures intended to ensure extensive participation by the provinces in the application of the two covenants and other agreements that Canada signs in the realm of human rights. Québec has prepared portions of periodic reports in respect of questions that fall under its jurisdiction that Canada submits to the Committee on Human Rights set up in conjunction with the International Covenant on Civil and Political Rights. When asked to participate in federal government delegations to the Committee, Québec has sent public servants who have provided Committee members with opinions and information when questions pertaining to Québec's jurisdiction or calling into question its legislation have arisen.⁶

Aside from the two UN covenants, Québec has consented by order in council to Canada's ratification of several other international agreements, such as the International Convention on the Elimination of All Forms of Racial Discrimination (1978), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), and the Convention on the Rights of the Child (1990). From the standpoint of its conception and administration, the Québec Charter of human rights and freedoms has reflected changes in international human rights law. Claude Filion, President of the Commission des droits de la personne et des droits de la jeunesse, has stated that the Québec Charter is a direct offshoot of the Universal Declaration of Human Rights of 1948.⁷

⁵ *Singh v. Ministre de l'Emploi et de l'Immigration*, [1985] 1 R.C.S. 177; *Ford v. Québec (Attorney General)*, [1988] 2 R.C.S. 712.

⁶ See William A. Schabas, *Précis du droit international des droits de la personne*. Cowansville: Les éditions Yvon Blais, 1997, 425 pages.

⁷ Claude Filion, "Solidarité et espoir," in *Images*, February-March 1998.

Debate on the adoption of the Québec Charter of human rights and freedoms (1974)

Québec National Assembly
12 November 1974

Jérôme Choquette, Minister of Justice

[...] In my view, Mr. President, we can define the objectives of this draft legislation in the following manner: first, situate Québec in the current of legislative development in western countries from the standpoint of the respect for individual rights and freedoms. All countries in the West, Mr. President, have adopted legislation that is intended to protect what are deemed to be basic individual rights and freedoms.

In Québec, either through negligence or for other historic reasons, we have not, until now, legislated in this field. We all know, Mr. President, to what extent the intervention of the modern State, whether the Québec State or other governments, is becoming increasingly pervasive in Québec society and in other societies. In other words, protecting individual rights and freedoms is becoming a genuine factor as the power of governments expands. [...]

A second objective of this draft legislation is to encapsulate certain democratic and social values established in Québec, in Canada and, generally, in the West. I will return to this question shortly in my comments on the development of individual rights and freedoms over several centuries. [...]

Behind certain measures in favour of the individual, in French legislation, in British legislation, in the American constitution and legislation, are common principles and values that make these countries democracies and reflect the climate of freedom and respect for the individual prevailing in Québec. I would like to say at this point that, contrary to certain statements I have heard elsewhere, Québec has a solid democratic tradition. Overall, Québec has a historic, legislative and social past that honours democratic values and respect for the individual. I know that one can always pinpoint a few excesses or abuses of basic human rights, but every time, public common sense restored the situation so that it is hardly daring to confirm today that, in Québec and Canada, we live in one of the freest, most liberal societies in the entire world.

Consequently, I believe that it is not audacious for the government of which I am a part and this Parliament to decide to summarize these principles adopted through the ages by others and which we have perhaps inherited, principles that we have accepted and assimilated and that we fully accept. The time had come to give Québec a charter of human rights and freedoms.

A third objective of this draft legislation is to facilitate the subsequent development of values that cover the individual rights and freedoms recognized in the liberal tradition.

I do not believe that it is possible to define individual rights and freedoms once and for all and that such rights and freedoms will not change and develop subsequently. To the contrary, history teaches us that individual rights and freedoms have developed through additions, by means of a series of victories and confirmations of principles that are, increasingly, part of a nation's legislative and social heritage. [...]

The fourth objective of the proposed charter is to make provision for recourse when individual rights and freedoms are violated. In some quarters, it is thought that individual rights and freedoms are not a matter that should be recognized by the courts, that such charters should be statements of broad principles, however noble, that have no immediate application before the law courts, in trials or in respect of public or private administrations.

Mr. President, the draft legislation that I have the honour to table today ensures recourse in respect of individual rights and freedoms, because, you will note, not only does it make provision for action for damages and injunctions when such rights are violated — the Leader of the Opposition can corroborate this observation — in that it allows the courts to award exemplary damages, not moral damages, as has always been the case in our traditional jurisprudence, but exemplary damages in the event of a deliberate violation of the principles spelled out in the charter.

In other words, Mr. President, this text is not only a statement of broad principles, however valid, but it is also intended to be a tool that citizens and persons subject to trial may use effectively before the courts.

I would add, Mr. President, that in addition to this recourse before the regular courts that I mentioned earlier, i.e. action for damages, injunctions and exemplary damages, the draft legislation institutes a

human rights commission to which individuals may resort in cases of discrimination. Initially, the commission may act as a conciliator between the individual who suffers discrimination and the individual who causes it. However, if this conciliation fails following requests or suggestions from the human rights commission, the commission may take up the defence of the individual discriminated against and become the plaintiff before the regular courts to obtain a penalty in respect of the individual right infringed upon.

Obviously, this phase would occur subsequently. We preferred to opt, first of all, for conciliation. Should conciliation fail, we would then have the commission's decisions approved by the regular courts, which, of course, implies a more decisive intervention by the courts. We believe that this formula is more in keeping with what we want to achieve through this draft legislation, i.e. not to create discord, disorder and social conflicts but, to the contrary, Mr. President, to resolve them.

While I am on the subject of discrimination, I would like to say that Québec should adopt legislation of a much broader scope in this respect.

When I speak of discrimination, I am referring, of course, to discrimination that occurs, as the draft legislation stipulates, as a result of exclusion, a preference based on an individual's race, colour, sex, religion, political beliefs, language, or national or social origin.

We undoubtedly had certain legislative provisions but they were only partial and Québec should have broad legislation in this field, above all at a time when we all agree, I believe, in wanting Québec to achieve maturity in all respects and ensure that social conflicts do not result from discrimination.

Consequently, these are the four key objectives of the legislation. Allow me to explain, in fairly general terms, the legislation's contents. The draft legislation is divided into two parts: the first part contains the charter of human rights and freedoms and the second part, the constitution of the future Commission des droits de la personne.

I now return to the first part and would like to explain, in broad terms, that it is the extension of the rights that are defined in this charter. First, there are basic freedoms and rights, which are part of civil law and public law. Not only do we spell out certain principles that concern the individual as such and certain inalienable, imprescriptible individual rights,

such as the right to life, to safety, to personal freedom, the right to receive assistance with respect not only to rights attached to the individual as a living being but also certain freedoms that are recognized in civil and in public law, such as basic freedoms of conscience, religion, opinion, expression, peaceful assembly, and association. Mention should also be made of certain new rights that have not fully developed or been extended, either in written law or jurisprudence, the right to respect for privacy and other similar rights, in respect of which provision has been made for recourse in the event of infractions. [...]

This draft legislation clearly innovates in relation to the past. Provisions to prevent discrimination based on race, colour, sex, religion, political beliefs, language, and ethnic, national or social origin are being fully extended from the standpoint of the exercising of the basic freedoms and rights that I mentioned earlier.

Under the provisions that follow in this part of the draft legislation, it is forbidden to discriminate against a person for the reasons mentioned in any legal act, public notice, in admission to any public place and, also, in any admission to a professional association or at the time of hiring.

Consequently, Mr. President, I believe that we must recognize that the government has innovated and has taken the initiative with regard to antidiscriminatory provisions.

What follows, Mr. President, are definitions of two basic rights that we might deem political rights. The right to submit petitions to the National Assembly is a right that has developed throughout history and that is covered by ancient British statutes. It is a right that still exists, I believe, even in the by-laws of the National Assembly, and it is a right that existed in the old by-laws of the National Assembly, because the right to submit petitions may seem to someone who is not conversant with legal matters to be a right of only limited importance. However, it is, indeed, an essential right, since it confirms the right of citizens to directly approach the Parliament.

The second political right that is mentioned, Mr. President, is the right for anyone who is legally qualified to stand as a candidate in a provincial, municipal or school board election and the right to vote in such an election, which is, I believe, the basis of the democratic system.

Now, Mr. President, we come to the definitions concerning judicial rights. I will not describe them in detail but a reading of the draft legislation will reveal the government's concern to clearly, precisely stipulate the rights of individuals before the courts, the rights of individuals under arrest, the rights of individuals who are incarcerated, or the rights of witnesses when they are called to testify before the courts.

We now come, Mr. President, to another series of rights, found in Chapter IV of the draft legislation, which are called economic and social rights. These rights are of considerable importance. Some observers may say, in some instances, that they are an expression of good will, but I think that because they are recognized in draft legislation such as the legislation before us it will ensure their important nature from the standpoint of the democratic values I mentioned earlier, i.e. a number of these socio-economic rights encapsulate to some extent certain things, principles and values to which we are attached in Québec. However, some of the rights are subject to provisions in other legislation, which I am far from denying, they nonetheless represent an integral part of our democratic heritage. It is for this reason that we have included them in the charter.

Consequently, Mr. President, there is no doubt that the charter of human rights and freedoms that we are tabling is a project that includes a broad extension of the rights defined and incorporated therein compared with other charters here and elsewhere. [...]

Before I examine the question of the legal impact of the charter on other legislation, about which I will speak shortly, I would like to examine the second part of the draft legislation, which establishes the Commission des droits de la personne, to briefly describe the commission, its role, functions and future. The Commission des droits de la personne will be appointed directly by the Parliament, by the National Assembly on a proposal from the Prime Minister. Second, the commission will report directly to the National Assembly, as will the ombudsman. The commission will be empowered, primarily, to organize educational programs to promote the charter's principles, conduct research and cooperate with other organizations pursuing the same ends. However, Mr. President, the commission will be responsible, above all, for investigating complaints pursuant to the portion of the draft legislation devoted to discrimination. In this perspective, the commission can act as a conciliator, as I noted earlier. If it succeeds in effectively achieving agreement between parties with

diverging interests, so much the better. If it cannot harmoniously perform its role, it may have recourse to the courts on behalf of the person discriminated against or injured. [...]

Now, Mr. President, there is another argument in light of which we adopted this formula of the non-transcendence of the charter over other statutes, i.e. we are a Parliament based on the British model. We are not living under a presidential regime. Charters that spell out absolute principles are more in keeping with presidential regimes than parliamentary systems. We have only to look at the American constitution, for example, in which a number of principles are spelled out in an absolute, intangible manner. However, Great Britain, whose democratic tradition undoubtedly matches that of the United States, has never felt the need to limit itself to an absolute constitution that establishes a number of absolute principles in such a way that it is impossible to deviate from them. In Great Britain, which has a parliamentary regime, individual rights and freedoms have, instead, been enshrined in various statutes, in legislation that could be amended by successive Parliaments. Here, as the Leader of the Opposition is aware — may he not contradict me on this point — under the principle of the supremacy of Parliament and the elected representatives of the people, that is to say that Great Britain preferred to put its trust in the elected representatives of the people instead of in a constitutional text, which, undoubtedly, the Leader of the Opposition would like to give us.

Thus, there are two traditions, two ways of acting. I am not judging them, nor am I saying that there are not positive and negative points on both sides. However, as I favour the parliamentary system over the presidential system, I prefer to continue in the parliamentary tradition and follow the example of Great Britain, where legislation is gradually sanctioning and confirming rights. [...]

Mr. President, I would like to conclude by saying that the charter will be binding on the government and all of its agencies. It is true that the charter will not transcend other legislation, but the government itself and all of its agencies will be bound by it, along with the municipalities. Consequently, the charter has an unquestionable extension.

The adoption of this draft legislation, Mr. President, will mark a turning point in the strengthening and development of individual rights and freedoms in Québec. I believe, Mr. President, that Québec will be a more mature, civilized society as a

result of the application of the principles found in the legislation.

Jacques-Yvan Morin, Leader of the Official Opposition

Mr. President, Quebecers have been waiting for over 10 years for a charter of human rights and freedoms. Such a charter was discussed before 1960 at a time when Québec was strikingly out of step with the principles confirmed in the *Universal Declaration of Human Rights* adopted by the UN General Assembly in 1948.

Unfortunately, we must recognize that the draft legislation before us is not a genuine charter or original law that would take precedence over all other statutes and could serve as a general framework for legislation. It is a statute among other statutes, a “very ordinary” law. It is assuredly better than nothing. That is why we will vote for the principle underlying the act. However, to tell the truth, this is not what we expected from a government that has claimed for several years — this project has been announced since heaven knows when — to be resolved to effectively protect individual rights. [...]

However, Mr. President, the need for an original law whose principles would take precedence over ordinary statutes and which could only be amended by a special or qualified majority of this National Assembly no longer needs to be demonstrated. What was needed — what we will need, sooner or later — is a framework law that we do not have, we, who, to tell the truth, do not even have a written Québec constitution.

For several decades, two phenomena have appeared in Québec that have completely altered the traditional society into which individuals were better integrated and better protected through community ties than is the case at present. I am referring to industrial society and the modern State, which have literally swept away old structures and replaced them, it must be said, with economic and social *laissez-faire*. We have witnessed the growing intervention of the State, partly to fill the void left by economic and social *laissez-faire*, and the growing intervention of an admittedly benevolent but all the same, cumbersome, bureaucracy, an apparatus that occasionally imposes red tape in the everyday lives of individuals. [...]

We are, therefore, faced with the need for a new social contract and I imagine that the minister’s proposal is intended to satisfy, at least partially, this need. The community life of old has almost disap-

peared. We must invent new forms of community life in an industrial society based, alas, as North American civilization would have it, on the rat race. We must redefine society’s social goals, the place that the individual occupies and, in this perspective, a charter of human rights is an ideal instrument for social construction. A genuine charter, and not the document before us, which is nothing more than an ordinary draft bill, would make it possible to define the reciprocal obligations of individuals and society along with the social, economic, political and cultural rights of Quebecers, and their basic freedoms. With a genuine charter, it would be possible to make of this potential legislative monument a framework for all Québec legislation. [...]

Moreover, Québec’s responsibilities will be considerable. I would like to indicate a few of them.

First, according to section 92 of the BNA Act, Québec has the power to amend its own constitution, except as regards the functions of the lieutenant-governor. It may, therefore, modify the composition of this Assembly and the conditions governing the eligibility of the people’s representatives. It may amend the method of voting which, Mr. President, I hope it will do promptly. It may amend the duration of this Assembly and the frequency of sessions. It may modify the electoral map, to favour the Opposition parties or the party in power. All of these factors very directly affect Quebecers’ basic political rights. [...]

Second, Québec exercises exclusive control over ownership and civil law. This encompasses the legal capacity of the individual, for example, the status of married women, property, estates, contracts, and misdemeanours, all of which directly affect basic individual rights.

Third, as you know, the courts have evoked the principle of freedom of contract to justify distinctions centred, in particular, on race. I will not frivolously review all of the jurisprudence since most of the jurists in the Assembly are thoroughly familiar with the jurisprudence, which, based on freedom of contract, made it possible to establish distinctions based on race. This question also falls under civil law.

Fourth, Québec enjoys very broad jurisdiction in the economic and social spheres. It is true that it must share this jurisdiction, under the existing Constitution, with the central State, which, to tell the truth, controls key jurisdiction in the economic sphere. However, nothing prohibits the National Assembly from adopting its own declaration of rights

concerning facets of the questions that concern it. I am thinking, in particular, of neglected aspects, such, for example, as the right to work, with all of the nuances that implies — I will return to this question later — freedom of association, of which there is no mention whatsoever... [...]

Fifth, while the federal Parliament exercises jurisdiction over penal law and criminal proceedings, Québec is responsible for the administration of justice. It has the power to impose sentences by means of fines or even imprisonment. Personal freedoms are as much at the mercy of the Québec government as they are at the mercy of the federal government. Individuals may be arrested by Québec authorities, they may be detained and have to defend themselves in cases arising from the administration of Québec legislation.

Sixth, civil liberties, to which section 3 of the act alludes a bit too hastily, i.e. freedom of religion, thought, and expression, are already largely protected by public law in this country. In the British tradition, it is jurisprudence that plays this role in the absence of a written constitution. However, there are numerous cases of jurisdictional conflict that have shown that Québec can very easily and, in the past, has not hesitated to, interfere with basic rights, above all in Duplessis' time. [...]

All of the foregoing comments, Mr. President, demonstrate the scope of our responsibilities to Quebecers. It was advisable for us to adopt legislation. [...]

From the standpoint of economic and social rights, I believe that the draft legislation contains the weakest, most aleatory provisions. These economic and social rights, as the minister pointed out, are the human rights of the 20th century. The rest of the charter, political and civil rights, which, I agree, are quite well protected — at least they would be were we talking about an original act — are rights that have been confirmed through history, since the 18th century in particular. However, the rights of the 20th century are economic and social rights. There was good reason for the UN General Assembly to draw up and adopt a special Covenant dealing with these rights.

I would go so far as to say that today, there can be no political democracy without economic democracy. Perhaps, one day, we can achieve a pseudo-political democracy in Québec without achieving economic democracy. What I mean is that we could achieve a situation in which legislation is enhanced, particularly the electoral laws, we would

have the impression that we are living in a democracy while, in reality, having failed to protect and develop economic and social rights, all that we would have of democracy is the façade, of the sort that the 18th century defended.

Today, in most countries and at the United Nations, it is economic and social rights that take precedence. We expected them to figure prominently in this draft legislation. [...]

The second aspect, Mr. President — I will soon reach my conclusions — is nonetheless important. This second aspect of the objections raised to Québec's jurisdiction in the realm of human rights is the following: The sovereignty of Parliament is the underlying principle over which nothing else prevails. The minister referred to it earlier and, upon my word, he is in good but somewhat old-fashioned company, since he was referring to Dicey. This author wrote that the British Parliament could not restrict its own powers and jurisdiction through legislation. [...]

However, Mr. President, the jurisprudence of the Commonwealth contradicts both Dicey and the minister. While it is unquestionable that a Parliament may not limit its own discretionary powers, its sovereignty, as the minister noted, or that of its successors, as for the essence and substance of the legislation, several modern authors have maintained that it is nonetheless possible to bind itself in the manner in which it legislates.

I am thinking of an author whom I hold particularly dear, since he was once my professor: Ivor Jennings. [...]

Jennings maintains that, despite the dogma of sovereignty — because it is a dogma when you refer to Dicey — despite the dogma of the sovereignty of Parliament, the latter may bind itself in the manner in which it votes even though it may not bind itself in terms of the essence of the legislation.

An amendment could not be adopted without two-thirds or three-quarters of the members of the Chamber voting in favour of it. Naturally, the amending formula would be protected by the same majority rule.

I would now like to turn, Mr. President, to my conclusions on this important draft bill. What, concretely, is its scope? Most of the rights and freedoms described in the proposal already exist in Québec and Canadian law. Most of them have been confirmed by jurisprudence, since most public law of

British origin is not written down. This part of the law, in particular, is not written down and is not covered by a constitution or an original act. [...]

Of what use will the act be, since it does not accord any fundamental character to the rights that it pretends to protect? I see in it a certain utility, but it is, above all, pedagogical in nature. [...] [OUR TRANSLATION]

Source: *Débats de l'Assemblée nationale du Québec*, 1974, Vol. 15, pp. 2741-2757.

Financing of political parties

The improvement of electoral mores and practices has dominated political debate in Québec for a long time. In 1875, the first legal requirements concerning election spending were adopted. The legislation compelled candidates to appoint an agent to effect their expenses. In 1895, the publication in the Gazette officielle of a statement of the election spending of candidates became compulsory. During the 1920s and 1930s, these requirements were abolished and a certain laxity appeared in electoral mores, opening the door to corruption and the proliferation of secret election funds. Election reform was necessary. It was carried out in 1963 by Jean Lesage's Liberal government.¹ Under the reform, Québec adopted the first legislation intended to limit election spending. The legislation stipulated that political parties and candidates had to appoint an official agent responsible for authorizing election spending. It limited spending by parties and candidates and also made provision for government funding. A portion of the election spending authorized by the official agents was reimbursed by the Québec government. Québec legislation on the funding of political parties served as an example. In 1974, the federal Parliament adopted legislation in this respect.

In 1975, the Bourassa government initiated a reform of the 1963 legislation. When the Parti Québécois took power in November 1976, two major electoral reforms were introduced, i.e. the funding of political parties and referendums. On March 23, 1977, Robert Burns, the Minister responsible for Electoral and Parliamentary Reform, tabled in the

National Assembly Bill 2 on the funding of political parties. This reform, the most sweeping one ever introduced in Québec, was intended to halt so-called "secret" funds, to which private enterprise and interest groups contributed extensively. For the first time, Québec legislators tackled the very sources of the funding of political parties. Under the reform, legal entities, such as businesses and unions, would be prohibited from contributing. Only individuals would be allowed to contribute to the funding of political parties.

The legislation was tabled somewhat hastily and displayed a number of shortcomings. However, it was on the very principle of confining funding to individuals alone that the Official Opposition protested the most vigorously. An opinion handed down by the Commission des droits et libertés de la personne confirmed the public perception that the act went too far in excluding legal entities. Minister Burns finally gave in to certain arguments put forward by the Official Opposition and agreed to alter the draft legislation without changing its substance. Below are several excerpts from debate during second reading of the bill, pitting Robert Burns against his counterpart in the Liberal Party, Jean-Noël Lavoie.

The government and the opposition finally agreed on a version of the legislation that was adopted unanimously. Aside from limiting contributions to political parties to individual voters alone, the legislation includes a series of other measures intended to make the funding of political parties more transparent. For example, political parties and candidates are bound by law to produce annual public financial reports indicating the names and addresses of donors of contributions over \$100.

Debate on the Act to Govern the Financing of Political Parties and Amending the Election Act (1977)

Québec National Assembly
7 and 11 July 1977

Robert Burns

[...] Bill 2, tabled in the National Assembly on March 23, 1977, is the first substantial piece of draft legislation or, if you will, basic legislation, submitted to the National Assembly by this government. It is a first of which I am, if you will pardon the expression, extremely proud. Precisely six and a half years earlier, on September 23, 1970, the first Parti Québécois MNAs presented their first white paper, a

¹ S.Q. 1963, 11-12 Eliz. II, c. 13. For the history of legislation on the funding of political parties, see Charlotte Perreault and Madeleine Albert, *Cinquante ans au cœur de la démocratie : le Directeur général des élections et l'évolution de la législation électorale de 1945 à 1995*, Études électorales, Le Directeur général des élections du Québec, 1996, 53 pages.

150-page working paper entitled *La réforme électorale*, which was submitted to the committee of the National Assembly on electoral reform. [...]

The importance accorded electoral reform is not solely the prerogative of the party in power. Since 1960, previous governments have given the matter very serious attention, in my opinion. I do not hesitate in saying that Liberal governments, for a time, put Québec in the avant-garde in North America with respect to several aspects of the reform.

Moreover, it should be noted that no one who believes in reform will forget the important step that Daniel Johnson's government took when it abolished the legislative council. However, for any Quebecer interested in electoral and parliamentary reform, regardless of political beliefs, I think that one name emerges regardless of parties and individuals. It strikes me that now is the time to pay tribute to this individual, since 1960, it is the current Prime Minister, René Lévesque. [...]

Allow me to quote one of the oldest specialists in the field, Alexis de Tocqueville, who said: "Democracy does not give the people the most skilful government. However it does what the most skilful government is often powerless to create. It extends throughout the social system a nervous activity, an overabundant strength, an energy that never exists without it and which, provided that circumstances are even marginally favourable — I have added this parenthetical remark: I hope that it is — can produce marvels. These are its true advantages." [OUR TRANSLATION]

For those who do not like quotations drawn from another century, Madam President, allow me to broach Bill 2 starting with a definition of democracy, this perhaps more recent, which was formulated in 1970 by one of our researchers, who is now the chief of staff of the Minister of Municipal Affairs: "Democracy is a passion. It is the daily, constantly repeated emergence with each generation and each citizen of the value of the other person's choice." I would like to pay tribute to the person who coined this marvellous quotation and this marvellous definition of democracy. I pay tribute to him, but I think that it is perhaps the truest, most contemporary meaning that we can give to the word democracy.

It is precisely, Madam President, the "other person's choice" that the *Act to Govern the Financing of Political Parties and Amending the Election Act* deals with. The act pursues the following key objectives, which I will number from 1 to 5.

Specifically, the Act:

1. allows only individual voters to contribute to the funding of political parties;
2. ensures control over such funding through the disclosure of the political parties' revenues and expenses;
3. encourages small, diversified contributions;
4. encourages the collaboration of the political parties (I would like to point out that this fourth point is not presented in order of importance. As far as we are concerned, it is just as important as the first three and the fifth points.);
5. assigns to the director general of funding of political parties a twofold role with respect to control and information. [...]

As for the first point, Madam President, which states that only individual voters may contribute to the financing of political parties, it gives me pleasure to inform you that, less than a battle against a political past that is still all too present, this basic objective of restoring to individual voters alone democratic control over the electoral process will be a key factor in the future.

Beyond Bill 2, this objective will affect all electoral reforms that this government proposes to Quebecers and their representatives. I can already formally promise the members of the National Assembly that they will have to debate and adopt, we hope, other legislation that will guarantee that only individual voters control and organize electoral procedures, from the standpoint of school board, municipal and provincial elections. [...]

The legislation confirms, first and foremost, the absolute supremacy of the voters over political funding. It is not intended — I must heavily emphasize this point — to prohibit anyone from participating in the funding of elections. Its objective is to confirm, once and for all, the supremacy of the voter. Whether we like it or not, this affirmation leads irremediably to the elimination of the mediaeval privileges that the most privileged, best organized members of society conceded to each other. [...]

I would like to remind organized groups that they possess much more powerful means than individual voters to make themselves heard in democratic debate. Bill 2 extends to them a frank invitation to participate openly and publicly from now on in political debate and not in a basely corporatist manner, in

the wings, through secret contributions to secret campaign funds.

When any party is in the Official Opposition, it naturally assumes that it will, one day, be in power. It is in this perspective that we must protect all political parties. Among other things, this is one of the reasons for Bill 2. Some people might say that I am being a purist by speaking in these terms, that I am a dreamer fresh out of university. To the contrary, I am expressing the basic opinion of this government, sitting opposite you, ladies and gentlemen of the Official Opposition, by saying: we are taking risks so that this democracy can be revitalized and, above all, function.

It is sufficient for MNAs to talk to voters in their ridings to discern the inequality between ordinary individuals and organized groups with their cohorts of secretaries, technicians and thinkers. In the electoral arena, this inequality must no longer be tolerated since it provided those who were regularly dubbed the most privileged members of society with special access to the government and, above all, its representatives.

As for the second problem I mentioned at the outset, disclosure, I believe that it is a basic principle of the draft legislation. If the act is designed to enable individual voters to control the funding of political parties, it intends to give them the means to do so, obviously, not only by asserting the exclusive right of individual voters to contribute to the funding of political parties, but also by offering all citizens the possibility of obtaining all relevant information, through disclosure, on the finances of their parties and all political parties in Québec.

I believe that the disclosure of the funding of political parties is also a cornerstone of the reform of electoral institutions that this government intends to propose to Quebecers, all the more so as disclosure, in my view, reflects the recognition of the right of citizens to information. Madam President, it also touches on one of my basic concerns, which is to convince Quebecers that the time of secret political funds has ended, that a democratic climate has developed sufficiently and, possibly, that Quebecers are sufficiently mature to attain this stage, that our climate has developed in such a way as to genuinely allow voters to decide freely on funding the political party of their choice, without fear of reprisal. [...]

The disclosure of the revenues and expenditures of the political parties also clearly establishes the public role played by each political party. The act

does not require the political parties to reveal their electoral strategies, but to open their books. This is a simple matter, to open their books and their financial statements to the general public, to engage in their activities openly. [...]

Third, Madam President, several measures in Bill 2 are intended to encourage voters to make modest, diversified contributions.

The measure that works the best is undoubtedly the measure that grants the taxpayer a tax deduction in respect of the lesser of the following amounts, i.e. 25% of the contribution or \$100. This means that contributions over \$400 are not favoured by the act. Through this simple measure, we wish to emphasize that there are small contributions and to encourage such contributions. Moreover, we are saying to Quebecers, even those who take advantage of the maximum limit of \$3000, once you exceed \$400, there is no longer a tax credit.

Madam President, I would also like to emphasize that the \$3000 ceiling compels the political parties to diversify their sources of funding and to establish a popular base. In fact, I wonder whether we are not rendering too great a service — as the English say, with tongue in cheek — to our friends across the aisle, but never mind. We are prepared to do so in the interests of democracy and we hope that our friends opposite, regardless of which side they are on, can achieve this objective. The diversification of contributions, for all intents and purposes, prevents a party and even a politician from being subject to the interests of a handful of voters. This, too, is one of the basic objectives of Bill 2.

I would like to point out that, within the \$3000 limit, Québec voters may decide, in a democratic spirit, to send contributions to several political parties, with a view to maintaining a range of political parties that represent an open society. [...]

With respect to contributions, Madam President, I would like to point out that the draft legislation stipulates that contributions to a political party may take forms other than financial contributions. A voter may offer a political party various services, provided that they are accounted for financially. [...]

However, I wish to assure you that the government is quite determined, while excluding the possibility of contributions from legal entities, whether companies, unions or any other group, to allow contributions of services from organizations

specializing in the information media. This reflects existing customs in this field.

As for the fourth point, Madam President, if the draft legislation seeks to encourage the collaboration of the political parties, it is because I remain convinced that there can be no sweeping reform of our electoral institutions unless the political parties represented in the National Assembly participate willingly and actively in such a reform.

From the standpoint of the reform, Québec voters must not be left at the mercy of a change of government. Political parties must learn together about democratic practice. This stimulating collaborative experience governs, in particular, the Ontario and California commissions responsible for administering legislation similar to the draft legislation that we are tabling today.

The advisory board stipulated in Bill 2 is based largely on the work of the California and Ontario commissions that I mentioned earlier. The advisory board will become the immediate associate and representative of the director general of the funding of political parties, in particular by advising the director general on the administration of the act, examining projects and the director's directives and by encouraging the director in the accomplishment of his duties with respect to control and information. [...]

As everyone has noted, Madam President, the future director general responsible for administering this act will assume a twofold role pertaining to control and information.

Today, I do not intend to emphasize the director general's role with respect to control, except perhaps to stress that it strikes me as necessary to submit to a single authority, now associated with an advisory board, control over the contributions collected and the total expenses incurred by the political parties, both during and outside election periods. [...]

I believe that the draft legislation as submitted is fairly well structured as regards control. Once again, I assume that we will examine the question at length before a parliamentary committee. Such control is one of the aspects that I do not want to neglect in the draft legislation. In his capacity as controller, the director general will be able, within the framework of the act, to authorize political parties, riding associations and independent candidates to collect contributions. Moreover, it is in this capacity that he will receive and verify the reports submitted to him.

Beyond this function — and in concluding, you will allow me to emphasize the last point — assumed by the director general, it is Québec voters who must become the foremost controllers of the funding of political parties. [...]

If accounting controls do not lead to public control, we will, for all intents and purposes — and we will all be distressed by it — have strengthened democracy. This assertion, you understand, clarifies the role in respect of information played by the director general, who becomes, first and foremost, and I wish to stress this point, an educator and a source of information for the public rather than an effective auditor.

We have not yet fully understood and promoted the radically innovative role in respect of information played by the director general. It is my hope, Madam President, that the reading of section 16 — without insisting, since this is not the time to discuss it — and in particular, paragraph 2, of the act, will convince you of the sweeping possibilities open to the director general and, through him, to all Quebecers in the new realm of political funding. For this reason, I would simply like to point out that the director general will have to respond to any requests for information from individuals or the news media, maintain a public information centre on the funding of political parties, conduct and publish studies on the matter, and hold regular information meetings and symposia with the political parties.

To conclude, Madam President, I admit quite humbly that the draft legislation I have the honour to table [...] perhaps does not ensure reform itself. However, it is with considerable pride that I venture that this draft legislation marks the beginning of a genuine, fundamental electoral reform. [...]

Jean-Noël Lavoie

Madam President, it is with pleasure that I intend to participate in this debate initiated last March on Bill 2 concerning the funding of political parties in Québec.

My first comments in my capacity as leader of the Official Opposition are words of mitigated satisfaction concerning Bill 2 governing the funding of political parties, as reprinted. Upon reading the text of the new bill, I am pleased to note that the legal and legislative nature of the act has been considerably enhanced and, all told, the apprehensions and exaggerations noted when the first draft was tabled in March and vigorously denounced by the Official

Opposition, apprehensions and exaggerations that were noted and confirmed by the Commission des droits de la personne, have been remedied or attenuated in most instances.

However, I am not totally in agreement with all of the provisions in Bill 2, since certain amendments, in the opinion of the Official Opposition, should be made when we examine the legislation section by section. At this point, I would like to inform the government that Bill 2 proposes an acceptable consensus in our ranks with respect to the very principle of funding political parties. [...]

Draft legislation such as the bill before us undoubtedly marks another milestone in the democratic life of our political regime. On this issue, the current government's thinking is precisely aligned with that of the previous government and, I would add, the Liberal Party, since the broad outlines of this act are to be found in various preliminary drafts of legislation in preparation last fall. [...]

The bill is not as revolutionary as all that, far from it. Several Canadian provinces, the federal government in Ottawa and certain American states already have similar bills, with few exceptions. West Germany and Great Britain also have such legislation. The reason that we, in the Official Opposition, expect the legislation and find it necessary is that it is the normal outcome of the electoral reform initiated — pursued by the previous government — in the 1960s by the Liberal Party. [...]

Even if the leader of the government is proud and happy, and rightly so, to sponsor this bill, he must not go too far. What he is doing now is to take a first step in the normal democratic process in Québec, which we started, especially on this side of the Assembly, through the major reforms that I mentioned earlier: two redraftings of the electoral map, the establishment of an independent permanent commission to review the boundaries of electoral ridings, the elimination of the protection granted certain electoral ridings, the limit on election spending, the reimbursement of candidates' election expenses, which goes back roughly 15 years, the establishment of permanent voters' lists, the establishment of an annual review of voters' list, the shortening of election periods and, necessarily, the attendant expenses and, also, once again last year, a significant government contribution to the administrative expenses of the political parties, under legislation adopted on December 19, 1975 allocating \$400 000 to the different parties depending on the percentage of the vote obtained. I would also like to point out that, during the

same years, the Union Nationale reformed our democratic system by abolishing the Legislative Council. [...]

Where the government has made significant changes, which we believe does them credit, is with respect to the role of the director general and the restriction of his powers. [...]

However, some worrisome questions remain, which I would like to put to the government. [...]

Another observation is not of an administrative or operational nature but is a question of principle. I am referring to legal entities, such as corporations, groups of citizens, associations, cooperatives, unions, companies, and so on. I do not wish to engage in an in-depth debate, Madam President, although I would like to emphasize that legal entities are confirmed by our civil law, institutions, traditions, that legal entities have rights and social duties through our civil law, once again, and that the same legal entities pay taxes that enable the State to administer itself. Instead of eliminating a recognized right in one stroke, it would have been preferable by far to control donations by legal entities. By limiting such donations, provided that such a limit is minimal, at least, we would respect a principle of expression and association that the Commission des droits de la personne has reconfirmed.

Whether funds come from an individual, a corporation, partners, a union or the joint shareholders of a small or medium-sized enterprise, it is not a sin for a corporation or a company to donate within the limits set by the law. They do so out of conviction, not always out of self-interest. These legal entities, whether they are enterprises or other entities, are entitled to their convictions and may be in favour of a social regime that reflects such convictions. The same is true of the unions. Why may a union or a group of workers not contribute to a political party to combat another party that is too far to the right or too vigorously defends free enterprise? To strike a balance, why not allow corporations to contribute to a political party that advocates a social state that reflects their desired social order? That is what democracy is. [...]

One final observation, Madam President, which is a question of principle. I do not see how a minister could administer this act. I feel this is an enormous blot on our democratic system. I will not refer to the section of the act because I am making it a question of principle. Since the act must eventually be incorporated into a future charter encompassing Québec democracy overall, the entire electoral system,

why should a minister be responsible for administering the act? Other statutes do not require ministerial responsibility. I believe that legislation governing organizations or operations of this sort should not be the responsibility of a member of the executive branch of government. [...]

[OUR TRANSLATION]

Source: *Débats de l'Assemblée nationale du Québec*, 1977, Vol. 19, pp. 1845-1850, 1926-1931.

Consulting the people

The idea of implementing a permanent procedure for consulting the people emerged in Québec in the 1960s. In 1919, Québec held a referendum on the regulation of the sale of alcohol, an experiment in direct democracy that failed to catch on. In its 1966 electoral platform, the Union Nationale put forward the idea of having drawn up by a constituent assembly a Québec constitution that would confirm the sovereignty of the Québec people and its right to be consulted through referendums. In the course of the government's mandate, shortened by the premature death of Daniel Johnson, the Prime Minister expressed his willingness to have a framework law on referendums adopted by the legislative assembly. In 1970, his successor, Jean-Jacques Bertrand, tabled such legislation in the National Assembly, although it died on the Order Paper.

Elected in November 1976, the Parti Québécois government of René Lévesque made the adoption of a framework law on referendums its priority. In the summer of 1977, the Minister of State for Electoral and Parliamentary Reform, Robert Burns, published a white paper on public consultations outlining the principles that would govern the framework law on referendums. Following bitter debate, on June 26, 1978 the National Assembly adopted the Referendum Act, which incorporates the key ideas found in the 1977 white paper.

In this white paper, excerpts from which are presented below, Minister Burns indicated that the introduction of a framework law on referendums reflected his government's determination to gradually broaden public participation in public affairs, which explained the need to adopt a permanent procedure governed by law. The philosophy underlying the white paper was that the benefits of regulating electoral spending had been demonstrated after 15 years of practice in Québec and that it was also advisable to regulate referendum spending. The regulation was

intended to ensure that (1) the positions in the referendum debate were presented in the most balanced possible way; (2) the financing of a referendum campaign relied essentially on individuals and not on a handful of contributors or major corporations; (3) Quebecers are informed of all facets of the financing of the referendum campaign.

The white paper took it for granted that the referendum is consultative in nature and excluded the hypothesis that it would become a means of initiating legislation, allowing for the adoption of a law proposed by a fraction of the voters. The very initiative to engage in a public consultation must remain in the hands of the government, not the people. That is the solution best suited to the parliamentary system, although the white paper did suggest that public consultations could one day encompass public initiatives. It would be incumbent upon the National Assembly to formulate the question, following extensive debate.

The referendum framework adopted by the white paper was based largely on the referendum held in Great Britain in 1975 on the country's membership in the European Economic Community (EEC). The British legislation recognized two umbrella committees, which equally shared a government grant. However, no spending limits were imposed on the committees. The very unequal division of resources between the two camps finally decided the outcome of the vote held in June 1975. This British experience of a streamlined public consultation procedure accompanied by government funding convinced the Lévesque government to go even further with respect to the organization of the referendum. To government funding must be added control over the expenses and revenues allowed during the referendum campaign. Ceilings would be placed on the contributions that individuals could make to either umbrella or province-wide committees in order to strike a balance between the referendum options.

During debate in the National Assembly in the spring of 1978, the Lévesque government and the Opposition disagreed on the scope of the measures to regulate spending. Initially, the draft legislation stipulated that individuals would have to adhere to either province-wide committee, whose expenses and revenues were strictly limited. Any individual could spend up to \$300 above and beyond the spending attributable to the province-wide committees. An opinion handed down by the Commission des droits et libertés de la personne encouraged the government to relax this measure. The draft legislation was amended to allow for the establishment of groups affiliated

with the province-wide committee, i.e. organizations, which, while they were in favour of one option wished to pursue a strategy different from that of the province-wide committee. However, the Liberals did not deem the amendment sufficient to minimize the legislation's infringement on freedom of expression.

Since it came into force, the Referendum Act has provided the legislative framework for three referendums, i.e. the May 20, 1980 referendum on the sovereignty-association proposal put forward by the Lévesque government; the October 30, 1992 referendum on the Charlottetown Accord; and the October 30, 1995 referendum on the sovereignty-partnership proposal put forward by the Parizeau government. While the legislation has provided a framework for three referendums on self-determination during which the question of Québec's political status was posed in one way or another, the referendum is not, theoretically, confined to this question alone. It may also focus on questions of principle, legislation, social issues, or a proposal on political status. The choice of the theme and the formulation of the referendum question are the responsibility of the National Assembly. No rules respecting form apply to the formulation of the question, nor do rules of interpretation apply to the outcome, e.g. majority required, participation rate. However, the legislation does impose a number of constraints on the government, which may not adopt legislation subject to a referendum before the legislation has been submitted to the voters. Moreover, it may not organize a second referendum on the same issue during the same sitting of the National Assembly.

Since its adoption, the Act of 1978 has undergone a number of amendments. One problem raised by the administration of the Act was the subjection of the federal government and organizations from outside Québec to the legislation's provisions. For example, during the May 1980 campaign, the federal government spent roughly \$6 million, which exceeded the limits stipulated in the Act, i.e. \$2.1 million per province-wide committee. Be that as it may, a consensus gradually emerged in Québec on the need to establish a rigorous balance in referendum spending. When the October 1992 referendum on the Charlottetown Accord was held, the Liberal government of Robert Bourassa maintained the provisions in the 1978 Act.

In October 1997, the Supreme Court of Canada handed down a judgment that invalidated certain provisions in the Referendum Act.¹ The parties that

initiated the litigation contested the validity of the limits set by the Act on the freedom of expression and association of third parties, i.e. individuals not affiliated with the province-wide committees, a ceiling on whose spending was set at \$600. Far from repudiating the principles of electoral fair play underpinning the 1978 Act, the Supreme Court agreed that, overall, given its objectives, the Act imposed on freedom of expression and association limits that were justified in a free, democratic society. The Court approved the general objectives of the Act, recognizing that "the objective of the Act is, first, egalitarian in that it is intended to prevent the most affluent members of society from exerting a disproportionate influence by dominating the referendum debate through access to greater resources." Moreover, the system of balancing spending "is designed to preserve the confidence of the electorate in a democratic process that it knows will not be dominated by the power of money." However, the Supreme Court deemed the limits imposed on spending by third parties to be too rigorous and invalidated the provisions in the Act on the limitation of referendum spending. In the wake of this judgment, the Québec government asked Pierre F. Côté, the former Chief Electoral Officer, to explore possible avenues for amending the legislation. Mr. Côté recommended, among other things, that the ceiling on the eligible spending of third parties be increased. Consequently, the National Assembly amended its electoral legislation in October 1998.

Public consultation in Québec (1977)

Introduction

In the same spirit of reform, both electoral and parliamentary, which has spurred it on since its election, the Government of Québec is proposing a further step toward democracy in our political institutions. A far-reaching consultative process will, by means of referendums, give the people a greater voice in political decisions. [...]

The law concerning consultation with the public will contain a fundamental Principle of the Government's electoral and Parliamentary reform: improved regulation of political funding and spending. For fifteen years now, campaign spending has been limited by law, in order to protect the voter from a flood of propaganda. This has always, and rightly, been considered a forward step in political ethics. The Government intends to broaden this rule to apply to referendum campaigns. Political funding will henceforth be controlled by the provisions of the law on the

¹ *Libman v. Québec (Attorney General)*, [1997] 3 R.C.S.

financing of political parties; the Government proposes that similar rules be applied to the financing of referendum campaigns.

The Government hopes in this way to attain three objectives. The first is to ensure that the various factions have as close to equal chances as possible. The second is to see that referendum campaigns are based on personal financial contributions from the voters rather than from a handful of wealthy contributors. And the third is to guarantee that all the financial aspects of the campaign are made known to the public.

It will be noted that provisions which have been retained, though owing something to many countries with strong traditions of democracy, spring above all from the experience of Great Britain in 1975, when she held a referendum on whether to keep her ties with the European Common Market. The parliamentary system, the long-standing democratic tradition, and the deep-rooted sense of fair play are British concepts which have all been absorbed into Québec's own political tradition, and the referendum mechanisms which Great Britain built on these concepts seem to the Government of Québec to be an invaluable guide in improving our own institutions. [...]

1- Consultation by Referendum

The referendums held under the new bill the Government plans to introduce will be for the purpose of consulting the public. Under the present constitution, a referendum has no direct legislative authority, since any such interpretation would trespass upon the powers and functions of the Lieutenant-Governor. [...]

In order to give legal power to a referendum, it would be necessary to use existing processes for amending laws which have their basis in the constitution or elsewhere. This constitutional obstacle in no way diminishes the political value of a referendum since the first binding law of democratic process is that of the clearly expressed majority, and a government can always commit itself explicitly to accepting the result of a referendum. [...]

2- The Initiative

[...] The Government is in favour of gradually extending the procedures of consultation to allow for a referendum originating with the people. It is obvious, however, that such procedures could not be immediately introduced without pushing aside a number of important factors. For example, consultation procedures in the United States and Switzerland

are based on time-honoured tradition. This is not so in Québec. Moreover, referendums originating with the people have always been more characteristic of presidential than parliamentary regimes for which certain adjustments would have to be made. [...] For these reasons, the Government believes that the question of referendums originating with the public must be seriously studied before this procedure is made a part of our political structures.

Yet the Government will not consider limiting the initiative to one solitary executive power as is the case in France. This is why, following the example of Great Britain, the Government has chosen a middle course between referendums originating with the people, a procedure which must be carefully examined, and referendums originating with the Executive, which seems too restrictive. As is the case of bills presented in the House, the concerted action of both Parliament and the Executive will be required in order to originate a referendum. It shall be seen further on that the National Assembly will thus play a major role in the Government's proposed procedure for consulting the public.

3- Phrasing the Question

The Government suggests that, once it has submitted its proposal, the National Assembly be responsible for crafting the final text of the question to be put to the public during the referendum.

The Government's position, which is based on the experiences of many other countries, rests on the conviction that it is up to the political institutions to direct the course of government affairs - as they do by enacting legislation - and that this responsibility cannot be left in the hands of an authority which is not responsible to the electorate.

A question to be settled by referendum will thus be submitted to the National Assembly in the form of a motion by the Government which, like the inaugural speech and the budget speech, will be open to special debate for up to twenty-five hours. It is understood that every Member of the National Assembly has the right, during the course of the debate, to propose amendments to the text proposed in the initial motion.

4- The Vote

(a) Procedure

Generally speaking, the Government, following the example of Great Britain, believes that,

insofar as is possible, general election procedures should be used for referendums. [...]

(c) Organization

The chief electoral officer should be responsible for organizing the vote, assisted by the returning-officer appointed for election purposes in each electoral district.

As in elections, the director general of financing of political parties, with the cooperation of the designated official agents, would be responsible for controlling funding and spending during referendum campaigns.

5- The Referendum Campaign

(a) Issuing the Writ

Once the National Assembly has adopted the resolution, it would be up to the Government to set the date for the referendum and get the entire process under way. [...] The vote would have to take place between thirty-five and sixty days after the writ has been issued. It is presumed that a permanent electoral list would have been drawn up prior to that period.

(b) The Participants

The Government considers it essential that the supporters of the various options offered the public during a referendum be given an equal opportunity to make known the advantages of their cause. It should therefore be possible for the supporters of each option to unite in a single organization which would be responsible for the campaign to promote their cause.

Just as Great Britain, during the 1975 referendum, requested the supporters and opponents of participation in the Common Market to unite in two politically independent organizations, so the Government of Québec suggests that, for each referendum, the supporters of the different options unite in ad hoc organizations responsible for organizing the campaign. These would be the only organizations entitled to receive financial contributions and incur campaign expenses. They could encompass individuals as well as groups and they would be managed by a national committee constituted in keeping with the procedure described below. [...]

(c) Setting up the Organizations

The Government suggests that the organizations participating in the referendum be set up in the following manner.

Upon receipt of the writ requiring him to organize a referendum, the chief electoral officer would decide how many organizations could participate in the campaign on the basis of the number of options offered the public. If two options were offered (yes or no, for example) there would be only two organizations. If three options were offered, as in the case of the first referendum which brought Newfoundland into Confederation, the chief electoral officer would allow the creation of three organizations.

A provisional committee would then be set up for each organization. It would have a three-fold function: to determine the make-up and structure of the national committee formed to manage the organization during the referendum campaign, to name a chairman and to appoint the official agent. The provisional committee would be made up of those Members of the National Assembly who registered within three days after the date the writ of referendum was issued. [...]

(d) Supervision of Polling Procedures

The chairman chosen by the provisional committee with the largest number of Members of the National Assembly, or his delegate in the district, would appoint the deputy returning-officers for each polling-station. [...]

Generally speaking, the responsibilities of these persons (deputy returning-officers, poll-clerks, agents) would be those set down in the Electoral Act for the same functions. Only the deputy returning-officers and the poll-clerks would be paid. Official agents would be governed by the provisions of the Act to govern the financing of political parties.

(e) Financial Aid from the State

When elections are held, the State reimburses the candidates for a part of their electoral expenses, in order to help each of them bring his message to the public. Obviously the same sort of government aid would be highly desirable during a referendum campaign, so supporters of all the options could present their case. A refund, however, is not a satisfactory method for dealing with a referendum, since there is not the same continuity as among the participants in an election.

Consequently, the Government proposes to replace the refund mechanism with a flat contribution, as the British did for their 1975 referendum. Each organization would receive the same amount; since this amount could vary from one referendum to another, it would be settled by the National Assembly at

the same time as the wording of the question to be voted on. [...]

(f) Control over Spending

As under the regulations which govern electoral expenses, only official agents would be able to incur or authorize referendum campaign expenses. The control mechanisms would be similar to those in force for elections. [...]

(g) Control over Funding

Organizations would be able to draw their financial support from three sources: the State contribution discussed above, the electorate, in accordance with the Act to govern the financing of political parties and the political parties recognized under that Act, which would be allowed to donate no more than \$0.25 per voter to the organizations. [...]

**Appendix
Various Approaches to Referendums**

Great Britain

The referendum on continued Common Market membership held on June 5, 1975, was of a purely consultative nature, although the government had promised to abide by the verdict. In most respects, the usual election procedures were followed. [...] By law, Britain officially recognize two organizations which received a grant of 125,000 pounds. These two organizations, composed of elements from all political parties, promoted and organized the campaign of each referendum option. [...]

No limit was set for the amount each organization could spend. Since those in favour of continued membership had strong support from industrial and commercial undertakings, the pro-Europe faction could draw from far greater financial resources than its opponents. [...]

Source: Minister of State for Electoral and Parliamentary Reform, August 1977.

Political system and democratic principles

The question of the political system – a monarchy or a republic – was pervasive until the establishment of the Canadian federal union in 1867, after which it gradually faded into the background in Québec and the rest of Canada.¹ The union of 1867

¹ On the question of the changing notion of the republic after 1867, see Stéphane Kelly, “Une tradition cachée : l’idée républicaine au Canada,” a paper presented at the

created a federation of a particular kind, i.e. a constitutional monarchy that adopted the same principles as the constitutional monarchy in the United Kingdom. However, unlike the UK, the Dominion of Canada did not have its own royal family. A colony of the empire, it recognized in the sovereign of the United Kingdom its constitutional monarch, deemed to be the head of the Canadian State. Indigenous governors exercised on behalf of the monarch the powers and prerogatives that the Crown enjoyed in the Dominion. The Governor General and the Lieutenant-Governors became, respectively, the heads of the federal executive and the provincial executives. In accordance with the Constitution of the United Kingdom, they enjoyed a wide array of prerogatives: the convening and dissolution of Parliament, the appointment of the government, assent to legislation, and so on. The governors had to act on the advice of their advisors, namely the Privy Council in the case of the Governor General and the Executive Council in the case of the lieutenant-governors.

The Lieutenant-Governor does not occupy the same position as the Governor General. He is not appointed by the Queen on the advice of her provincial advisors but on the advice of the federal Privy Council, that is the federal cabinet. The federal government remunerates the Lieutenant-Governor and may recall him. The Constitution obliges the Lieutenant-Governor to send to the Secretary of State of Canada a copy of each statute assented to by the provincial legislature, which the federal government may unilaterally disallow. However, it should be noted that this power of disallowance, like the power of the federal government to “reserve” for the Governor General assent to a provincial statute, have fallen into disuse, although the powers are still part of Canadian written law.

Like constitutional monarchies based on the British model, the governors abandoned the genuine exercise of their prerogatives to the cabinet, i.e. to the government formed by the majority party in the House. In practice, it is the Prime Minister who sets the date for the convening and dissolution of the House and who appoints government ministers. However, out of respect for convention and the letter of the law, monarchical rites are maintained. The governor officially maintains the exercise of his prerogatives, even if he does so on the instructions of the Prime Minister. Despite this democratic change,

“L’identité québécoise en question” symposium, 66th congress of the Association canadienne-française pour l’avancement des sciences, May 13, 1998, Université Laval, Québec City.

the constitutional monarchy is still the organizing principle of the Canadian State.²

The combination of federalism and a constitutional monarchy perhaps explains why, despite the unquestionable democratization of political life in Canada, Canadian federalism displays a number of centralist traits that are scarcely found in federalism of the republican type. The monarchy is a unifying principle that is impervious to decentralization. The Constitution Act, 1867 reflected this unity by attributing to the Governor General, representing the federal Crown, responsibility for the appointment of the provincial Lieutenant-Governors, judges and federal senators. A German or an American might find it strange that the federal chancellor appoints the minister-presidents of the *Länder* or that the President of the United States has the power to appoint at his discretion senators in Congress.

During the 1960s, the notion of the republic resurfaced in Québec. The constitution committee set up in June 1963 by the Québec Legislative Assembly examined in February 1964 the possibility of Québec's adopting a presidential regime, modelled on the 1937 Constitution of Ireland. The State of Québec could have at its head an elected president who would be the head of State in fields pertaining to Québec's internal sovereignty, while the sovereign of the United Kingdom would continue to be the head of the Canadian State.³ In July 1968, the government of Daniel Johnson, through its Deputy Minister of Intergovernmental Affairs, Claude Morin, submitted a series of proposals to the Continuing Committee of Officials on the Constitutional Conference. The federal and provincial governments were preparing a constitutional conference. Among the proposals put forward by the Johnson government, one called for making the Dominion of Canada a federal union and a republic. The Johnson government did not deem the notion of a republic to be of paramount importance to Canada as a whole. However, it believed that the Constitution of Canada, whether monarchical or republican, should allow Québec to become a republic and a State instead of a province. The day before

his death, during a press conference, Prime Minister Johnson publicly confirmed this proposal. However, it was not embraced either by the government of Jean-Jacques Bertrand that succeeded him, or by other Québec governments.

While the proposals put forward in July 1968 on Québec's political system were not pursued, they did clarify the scope of the constitutional reform of 1982. The reform's authors took the trouble to include the responsibilities of the Queen, the Governor General and the Lieutenant-Governors among those matters contained in the Canadian Constitution that may only be amended or abolished with the consent of all of the parliaments in the federation. Moreover, in keeping with the spirit of the constitutional monarchy, they vested formal power to amend the Constitution in the Governor General, who acts on the authorization of the parliaments.⁴ The monarchy could conceivably have been included in the general amending formula, which only requires the assent of seven provinces and the federal Parliament, or better still, the provinces been granted the freedom to opt for a republican regime or select their own lieutenant-governors. By reinforcing the status of the constitutional monarchy in Canada, the 1982 reform curtailed the ability of the provinces to make their institutions more democratic or republican in form.⁵

The question of the political system arose again in the fall of 1996. The Lieutenant-Governor of Québec, Jean-Louis Roux, sworn in by the Governor General on September 12, resigned from his position on November 5 when the press learned that he had expressed neo-fascist sympathies as a student.⁶ On November 20, the National Assembly adopted a motion (reproduced below) in which it expressed the wish that the office of Lieutenant-Governor, which is fundamentally symbolic and a vestige of the colonial past of Québec, be abolished. The National Assembly noted that the constitutional reform of 1982 had made it difficult to abolish this office and it demanded that

² See David E. Smith, *The Invisible Crown: The First Principles of Canadian Government*. Toronto: University of Toronto Press, 1995, 274 pages. See also Eugene A. Forsey, *Les Canadiens et leur système de gouvernement*. Supply and Services Canada, 1991, third edition, 57 pages.

³ See Gérard Tremblay, "Le Québec a besoin d'un lien direct avec Londres," *Le Soleil*, November 24, 1967; André Patry, "La capacité internationale des États fédérés" in Jacques Brossard, André Patry and Élisabeth Weiser, *Les pouvoirs extérieurs du Québec*. Montréal: Les presses de l'Université de Montréal, 1967, 463 pages.

⁴ As regards the independence Canada acquired in 1982, a federal government brochure indicates that independence has not changed our form of government, which remains a constitutional monarchy. Government of Canada, *The Great Seal of Canada*. Supply and Services Canada, 1988, 36 pages.

⁵ On the impact of the 1982 reform on the constituent authority of the provinces, see Jacques-Yvan Morin, "Pour une nouvelle Constitution du Québec" in Jacques-Yvan Morin and José Woehrling (directors), *Demain le Québec... Choix politiques et constitutionnels d'un pays en devenir*. Sillery: Septentrion, 1994, pages 145-214.

⁶ Manon Cornéliier, "Jean-Louis Roux plie bagage," *Le Devoir*, November 6, 1996.

the federal government appoint to the position of Lieutenant-Governor the person that it democratically designated. The federal cabinet appointed a successor to the Lieutenant-Governor who had resigned, without consulting either the National Assembly or the Québec government.⁷

Working paper submitted by Québec to the Continuing Committee of Officials on the Constitutional Conference (1968)

17 July 1968

Proposal

Subject: *Preamble: General objectives*
The democratic principle

We must declare that Canada is a democratic country and that its Constitution must express the popular will.

Comment

1. This principle allows us to more clearly specify where constituent authority resides. Such authority may only reside in Canada because the latter is a sovereign country. Moreover, because Canada is a democratic country, constituent authority may only reside in the Canadian people.
2. However, the Canadian people is not homogeneous. Just as Canada is a unique country but made up of several political entities most of which existed prior to the birth of Confederation, so the population of Canada is made up of diverse elements, most specifically of two major linguistic and cultural communities, or two nations in the sociological sense of the term, which does not include only the two ethnic groups or the two founding peoples but also all other Canadians of diverse origins that participate in either of our two national cultures.

Presented by the Québec delegation
24 July 1968

Proposal

Subject: *I – General provisions*
Form of government

⁷ On the question of a republic in Québec and Canada, see Frédéric Wagnière, “Comment devenir républicain,” *La Presse*, February 12, 1998; Jean-Pierre Bonhomme, “le Québec et la république,” *La Presse*, January 18, 1998; and Marc Chevrier, “La république, perdue et retrouvée,” *L’Agora*, November-December 1997.

It would be preferable for the Canadian union to become a republic, while remaining in the Commonwealth.

Comment

1. At present, a Canadian president at the head of the Union would be a greater factor in Canadian unity than the British Crown.
2. A republican regime, because it is more readily identified with the sovereignty of the people, is more closely aligned with the perception of most Canadians of the nature of their political institutions.
3. The adoption of a republican regime would provide an ideal opportunity to reform several of our political institutions in order to make them more effective.
4. A republican regime would express to the rest of the world Canada’s sovereignty and independence.
5. This reform, from the standpoint of the Union, is not sufficiently fundamental to make it a priority concern.
6. As for Québec, it would like to immediately become a republic within the Canadian Union.

Presented by the Québec delegation
24 July 1968

Proposal

Subject: *I – General provisions*
Number of member States

The constitution should specify that the union is made up of 10 States and two territories. Provision should be made for the admission of new States and the merging of States.

Comment

1. The designation “State” should replace “province”, which is another throw-back to the Empire and involves a notion of subordination. Above all, it has a pejorative meaning in French.
2. The central government could administer the territories, but their admission to the Union as States must be governed by a special procedure.

Presented by the Québec delegation
24 July 1968

[OUR TRANSLATION]

Source: Gouvernement du Québec, *Document de travail, propositions pour la révision constitutionnelle*, ministère des Affaires intergouvernementales, July 17, 1968.

Motion on the appointment of the Lieutenant-Governor

National Assembly of Québec
20 November 1996

Government Motion

Mr. Brassard, Minister for Canadian Inter-governmental Affairs, on behalf of Mr. Bouchard, Prime Minister, moved:

THAT the National Assembly reiterate that the office of Lieutenant-Governor is fundamentally symbolic and is a heritage of the colonial past of Québec and of Canada;

THAT the National Assembly take into account the fact that the events surrounding the recent appointment of the Lieutenant-Governor of Québec have proven that the appointment process employed until this day is of a nature to bring about controversy and to interfere with the proper functioning of institutions;

THAT the National Assembly reiterate its role as the guardian of democracy as expressed by the people of Québec;

THAT the National Assembly express the wish that the office of Lieutenant-Governor be abolished; nevertheless, given that the provisions of the Constitutional Act imposed upon Québec render impossible the abolition of this office at the current time, the National Assembly requests that the Federal Government henceforth appoint as titular of the office of Lieutenant-Governor the public figure democratically designated by the Assembly.

The debate being concluded, the motion was carried on division.

Source: *Votes and Proceedings of the National Assembly of Québec*, November 20, 1996, No. 55, pages 545-547.

Tables

Table 1 – Québec prime ministers since 1867

Name	Party	Dates
1. Chauveau, Pierre-J.-O.	Conservative	From 1867 to 1873
2. Ouimet, Gédéon	Conservative	From 1873 to 1874
3. Boucherville, C.-E. Boucher de	Conservative	From 1874 to 1878
4. Joly, Henri-C.	Liberal	From 1878 to 1879
5. Chapleau, J.-Adolphe	Conservative	From 1879 to 1882
6. Mousseau, J.-Alfred	Conservative	From 1882 to 1884
7. Ross, John Jones	Conservative	From 1884 to 1887
8. Taillon, L.-Olivier	Conservative	January 1887
9. Mercier, Honoré	Liberal	From 1887 to 1891
10. Boucherville, C.-E. Boucher de	Conservative	From 1891 to 1892
11. Taillon, L.-Olivier	Conservative	From 1892 to 1896
12. Flynn, Edmund J.	Conservative	From 1896 to 1897
13. Marchand, F.-Gabriel	Liberal	From 1897 to 1900
14. Parent, Simon-Napoléon	Liberal	From 1900 to 1905
15. Gouin, Lomer	Liberal	From 1905 to 1920
16. Taschereau, Louis-Alexandre	Liberal	From 1920 to 1936
17. Godbout, Joseph-Adélard	Liberal	June to August 1936
18. Duplessis, Maurice Le Noblet	Union Nationale	From 1936 to 1939
19. Godbout, Joseph-Adélard	Liberal	From 1939 to 1944
20. Duplessis, Maurice Le Noblet	Union Nationale	From 1944 to 1959
21. Sauvé, Paul	Union Nationale	From 1959 to 1960
22. Barrette, Antonio	Union Nationale	January to July 1960
23. Lesage, Jean	Liberal	From 1960 to 1966
24. Johnson, Daniel, Sr.	Union Nationale	From 1966 to 1968
25. Bertrand, Jean-Jacques	Union Nationale	From 1968 to 1970
26. Bourassa, Robert	Liberal	From 1970 to 1976
27. Lévesque, René	Parti Québécois	From 1976 to 1985
28. Johnson, Pierre-Marc	Parti Québécois	October to Dec. 1985
29. Bourassa, Robert	Liberal	From 1985 to 1994
30. Johnson, Daniel, Jr.	Liberal	January to Sept. 1994
31. Parizeau, Jacques	Parti Québécois	From 1994 to 1996
32. Bouchard, Lucien	Parti Québécois	From 1996 to the present

Source: Québec Chief Electoral Officer.

Table 2 – Québec election results, 1867-1998

Year	Seats	Parties	Number of seats	Participation rate
1867	65	Conservative Party Liberal Party Other	51 13 -	46.84%
1871	65	Conservative Party Liberal Party Other	46 19 -	34.96%
1875	65	Conservative Party Liberal Party Other	43 19 3	47.70%
1878	65	Conservative Party Liberal Party Other	32 31 2	63.91%
1881	65	Conservative Party Liberal Party Other	49 15 1	44.53%
1886	65	Liberal Party Conservative Party Other	33 26 6	63.96%
1890	73	Liberal Party Conservative Party Other	43 23 7	58.18%
1892	73	Conservative Party Liberal Party Other	51 21 1	59.97%
1897	74	Liberal Party Conservative Party Other	51 23 -	67.34%
1900	74	Liberal Party Conservative Party Other	67 7 -	29.77%
1904	74	Liberal Party Conservative Party Other	67 7 -	29.97%
1908	74	Liberal Party Conservative Party Other	57 14 3	59.65%
1912	81	Liberal Party Conservative Party Other	63 16 2	61.45%
1916	81	Liberal Party Conservative Party Other	75 6 -	43.46%

1919	81	Liberal Party Conservative Party Other	74 5 2	27.30%
1923	85	Liberal Party Conservative Party Other	64 20 1	57.36%
1927	85	Liberal Party Conservative Party Other	74 9 2	56.38%
1931	90	Liberal Party Conservative Party Other	79 11 -	77.01%
1935	90	Liberal Party Union Nationale Other	47 17 26	75.91%
1936	90	Union Nationale Liberal Party Other	76 14 -	78.23%
1939	86	Liberal Party Union Nationale Independent Other	69 14 1 2	75.74%
1944	91	Union Nationale Liberal Party Bloc populaire CCF Other	48 37 4 1 1	72.13%
1948	92	Union Nationale Liberal Party Independents Other	82 8 2 -	75.21%
1952	92	Union Nationale Liberal Party Independent Other	68 23 1 -	75.86%
1956	93	Union Nationale Liberal Party Independent Other	72 20 1 -	78.32%
1960	95	Liberal Party Union Nationale Independent Other	51 43 1 -	81.66%
1962	95	Liberal Party Union Nationale Independent Other	63 31 1 -	79.59%
1966	108	Union Nationale Liberal Party Independents Other	56 50 2 -	73.56%

1970	108	Liberal Party	72	84.23%
		Parti Québécois	7	
		Union Nationale	17	
		Social Credit Rally	12	
		Other	-	
1973	110	Liberal Party	102	80.38%
		Parti Québécois	6	
		Social Credit Rally	2	
		Other	-	
1976	110	Parti Québécois	71	85.27%
		Liberal Party	26	
		Union Nationale	11	
		Social Credit Rally	1	
		Parti national populaire	1	
		Other	-	
1981	122	Parti Québécois	80	82.49%
		Liberal Party	42	
		Other	-	
1985	122	Liberal Party	99	75.64%
		Parti Québécois	23	
		Other	-	
1989	125	Liberal Party	92	74.95%
		Parti Québécois	29	
		Equality Party	4	
		Other	-	
1994	125	Parti Québécois	77	81.58%
		Liberal Party	47	
		Action démocratique	1	
		Other	-	
1998	125	Parti Québécois	76	78.32%
		Liberal Party	48	
		Action démocratique	1	
		Other	-	

Source: Québec Chief Electoral Officer.

Table 3 – Outcome of Québec referendums

Year	Issue	For	Against	Participation rate
1919	Consultation on the sale of alcohol (beer and wine)	78% 178 112	22% 48 433	¹
1980	Consultation on sovereignty-association	40.4% 1 485 851	59.6% 2 187 991	86% 3 738 854 ²
1992	Consultation on the Charlottetown Accord	43.3% 1 709 075	56.7% 2 236 114	83% 4 033 021 ²
1995	Consultation on Québec sovereignty accompanied by a partnership with Canada	49.4% 2 308 360	50.6% 2 362 648	94% 4 757 509 ²

Source: Québec Chief Electoral Officer.

¹ Data not available.

² The participation rate includes the number of valid and rejected ballots (the proportion of rejected ballots stands at roughly 2%).

Table 4 – Women candidates and women elected in Québec elections

Year	Number of candidates	Total candidates	Number of candidates elected	Number of electoral ridings
1948	2 ¹	311	-	92
1952	3	236	-	92
1956	7	272	-	93
1960	0	253	-	95
1962	3	224	1 ²	95
1966	11	418	1	108
1970	9	466	1	108
1973	26	479	1	110
1976	48	556	5	110
1981	84	525	8	122
1985	134	666	18	122
1989	121	557	23	125
1994	138	680	23	125
1998	142	651 ³	29	125

Source: Québec Chief Electoral Officer.

¹ The first woman candidate stood in a July 23, 1947 by-election.

² Claire Kirkland-Casgrain was the first woman elected to the National Assembly, in a December 14, 1961 by-election. She was re-elected in the 1962 general election.

³ Partial results that do not include the outcome in the Masson riding, where the election was held on December 14, 1998.

Table 5 – Changes in the population of Québec

1667	3 918	1921	2 360 510
1716	20 903	1931	2 874 662
1765	69 810	1941	3 331 882
1824	427 465	1951	4 055 681
1844	697 084	1961	5 259 211
1861	1 111 566	1971	6 017 000
1871	1 191 516	1981	6 543 500
1881	1 359 027	1991	7 048 400
1891	1 488 535	1994	7 270 300
1901	1 648 898	1997	7 407 000
1911	2 005 776		

Source: Bureau de la statistique du Québec.

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Chronology

History of Québec institutions and democracy

1608 Samuel de Champlain founded Québec. He became the lieutenant-governor of New France in 1612.

1609 Based on a report from Champlain, Henri IV named the colony New France.

1647 The *conseil de la traite* was established to administer trade in New France. The following year, the French monarch established the *syndics*, elected annually by the colonists, who represented Montréal, Québec City, Trois-Rivières and the rest of the colony.

1657 A new royal decree replaced the election by the syndics on the “Conseil de Québec” by the election of four councillors by the colonist communities. This elective system is unusual from the standpoint of the institutions of the French monarchy.

1663 Louis XIV established New France as a royal province, abolished the system of representation of the Conseil de Québec and replaced it with the *Conseil souverain*, accountable to the king. However, the general assemblies of the colonists were continued until the end of the regime.

1672 Governor Frontenac convened the States-General of New France, which disturbed Minister Colbert.

1759 Québec City fell to General Wolfe.

1760 Capitulation of Montréal. The colony fell under the military regime of General Amherst.

1763 Royal proclamation by George III, who made part of conquered New France the “Province of Québec.” The proclamation stipulated that the governor should convene a general assembly of the representatives of the people when circumstances permitted. The assembly was never convened.

1765 First petition in favour of an elective assembly.

1774 June. Under the *Quebec Act* the *Canadiens* maintained their French civil law and were dispensed from the *Test Oath*, but the promise of an assembly disappeared from the Act.

- October. American war of independence. The American Congress sent an appeal to the *Canadiens*, urging them to make common cause with their neighbours from the South against English “despotism”, through a social pact based on the liberal principle of equal freedom for all.

Overview of the development of democratic institutions since 1608

1614 Louis XIII convened the States-General (*France*).

1641 The Irish rebelled in Ulster. The insurrection was quelled and Ireland fell under the influence of Cromwell and his colonists.

1642-1660 “Puritan” revolution. 1649 Execution of Charles I and proclamation of the Republic (Commonwealth). Restoration in 1660 (*England*).

1688-1689 Glorious Revolution. Bill of Rights (*England*).

1765 *Stamp Act*. First assembly of the representatives of the 13 American colonies; protests against the measure. The British Parliament abrogated the Act the following year (*United States*).

1773 Tea tax in favour of the East India Company; Boston Tea Party (the Company’s tea shipments were thrown into the sea) (*United States*).

1774 First Continental Congress in Philadelphia (*United States*).

1776 Declaration of Independence in the United States.

1777 Congress adopted the Articles of Confederation, which were ratified and applied in 1781 (*United States*).

1782 Ireland became a kingdom of the British Crown.

1783 Treaty of Paris, recognizing American independence.

1791 <i>Constitutional Act</i>. London divided the “province of Quebec” into two colonies, Upper and Lower Canada and gave each one an assembly under a shared monarchy. The governor, appointed by London, and a legislative council, whose members were appointed by the governor, held power without being accountable to the House. 1792 First elections in Lower Canada. Voters, regardless of sex, had to be 21 years of age and own a home or a plot of land with a minimum value or have rented the land for one year. 1809 Representative Pierre Bédard, cofounder of the newspaper <i>Le Canadien</i>, demanded a form of responsibility before the chamber of ministers of the governor of Lower Canada, James Craig. An irritated Craig dissolved the chamber in May. In December, <i>Le Canadien</i> published an article demanding ministerial responsibility. In March 1810, the governor prohibited the newspaper’s publication.	1787 Opening of the Constituent Convention in Philadelphia. The Constitution came into force the following year (<i>United States</i>). 1789 Election of the first Congress and the first president, George Washington (<i>United States</i>). 1789 March-April: elections to the States-General and writing of the lists of grievances. June: the third estate established a National Assembly. July-August: popular insurrections (storming of the Bastille; the great fear in the countryside), which led to the defeat of the ancien régime. The end of the feudal system was confirmed on August 4. August 26: <i>Declaration of the Rights of Man and Citizen</i> (<i>France</i>). 1791 Revision of the Constitution (suppression of the “pro rata division of assets,” but the tax quota for voting rights was maintained), to which the King of France took an oath (<i>France</i>). – Adoption of the Bill of Rights, the first 10 amendments of the Constitution (<i>United States</i>). 1792 Storming of the Tuileries and abolition of the monarchy. Election by universal suffrage of a National Convention (limited participation) (<i>France</i>). 1793 The Convention convicted the king of treason and had him executed on January 21. June 24: Constitution and Declaration of Rights (<i>France</i>). 1795 New Constitution and Declaration of Rights and Duties (<i>France</i>). 1799 A coup d’état brought Napoléon Bonaparte to power. New Constitution: the Council of State and the Senate were adopted (<i>France</i>). 1800 The Dublin Parliament voted its dissolution and the Union of Ireland and Great Britain began. 1806 End of the Holy Roman Empire. Napoléon established the Confederation of the Rhine. 1808 Congress prohibited the slave trade (<i>United States</i>). 1809 A new Constitution called for the separation of powers and the public dissemination of administrative documents (<i>Sweden</i>). 1814 Abdication of Napoléon. Proclamation of the Charter (<i>France</i>). – Following the return of the Prince of Orange, proclaimed “sovereign prince,” a new constitution established a constitutional monarchy (<i>The Netherlands</i>).
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1823 The Assembly, in agreement with the Legislative Council, vigorously opposed the proposal submitted by English-speaking merchants and bureaucrats of Lower Canada to the British Parliament in 1822 to combine Lower and Upper Canada into a single colony. London finally abandoned the project after lively debate. The Parti canadien and the population discovered how fragile their democratic institutions and their nationality were. 1824 The Legislative Assembly of Lower Canada, headed by Louis-Joseph Papineau, demanded the right to vote each year the subsidies paid to the colonial administration instead of leaving them to the discretion of the governor and the Legislative Council. 1831 Alexis de Tocqueville visited Lower Canada, where he observed that the 600 000 <i>Canadiens</i> displayed egalitarian traits specific to North America and democratic society. He believed that the people would enjoy a promising future if it defended and preserved its nascent democratic institutions. The legislature of Lower Canada adopted a law that established the full political equality of the Jews. 1834 The Legislative Assembly of Lower Canada adopted the Ninety-Two Resolutions focusing on the colonial regime's infringements on the separation of powers and on democracy. It demanded a genuine constitutional government for the colony and the political equality of its inhabitants and the British people. 1837 London refused to act on the Ninety-Two Resolutions. First insurrection in Lower Canada: battles at Saint-Denis, Saint-Charles and Saint-Eustache. 1838 Second insurrection. The <i>Patriotes</i>, led by Robert Nelson, declared the independence of Lower Canada and proclaimed the republic of Canada, based on the equality of its citizens, the secularity of the State and official bilingualism. This appeal failed to arouse the population. Some of the <i>Patriotes</i> were arrested or deported to Australia, while others, like Papineau, went into exile. In 1839, 12 <i>Patriotes</i> were hanged in Montréal on the orders of the British Crown. 1840 <i>Act of Union</i>. Upper and Lower Canada merged to form the Province of Canada. In response to the report submitted by Lord Durham, London hoped to place French Canadians in a minority and encourage their assimilation. Equal representation in parliament was imposed, although the population of Lower Canada exceeded that of Upper Canada, and the two colonies' debts were combined, which put Lower Canada, the less indebted of the two, at a disadvantage. In 1841, Kingston became the capital of the new province. 1844 Establishment of the Institut canadien de Montréal, which became the seat of radical liberalism after 1848. Montréal became the capital of the Province of Canada. 1848 The ministry of La Fontaine and Baldwin obtained "ministerial responsibility."	1815 The return of Louis XVIII was marked by the election of a traditionalist assembly (<i>France</i>). 1821 Mexico gained independence and declared itself a republic in 1824. 1830 Revolution: the Trois Glorieuses compelled Charles X to withdraw his antiliberal orders, then to abdicate. Louis Philippe, king of France, adopted a revised, more liberal charter (<i>France</i>). – Meeting of a national congress that proclaimed independence and implemented a representative constitutional monarchy, under a hereditary leader (<i>Belgium</i>). 1831 The lowering of the tax quota for voting rights doubled the electorate (<i>France</i>). - A new Constitution established parliamentary democracy with two houses elected by suffrage based on a tax qualification (<i>Belgium</i>). 1832 The <i>Great Reform Act</i>, the first electoral reform, broadened parliamentary representation (<i>England</i>). 1833 The British Parliament abolished slavery in all British colonies. 1835 Tocqueville published the first part of <i>Democracy in America</i> (<i>France</i>). 1840 The King of Sweden agreed to give the Council of State the form of a ministry (<i>Sweden</i>). 1848 Abdication of Louis Philippe; the Second Republic was proclaimed. The death penalty in political matters was abolished. A Constituent Assembly was elected and Louis-Napoléon Bonaparte was elected president (<i>France</i>).
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1849 April. Following the adoption of legislation compensating the <i>Patriotes</i> for losses sustained during the rebellion, furious English-speaking Tories set fire to the Parliament of United Canada in Montréal, a symbol of responsible government. The seat of the Parliament was moved to Québec City in 1851, to Toronto in 1855, returned to Québec City in 1856, then was established in Ottawa in 1857. 1854 Abolition of the seigneurial system. 1856 The members of the Legislative Council of United Canada, the Upper House, were henceforth elected. 1864 Reformers and Conservatives from the two Canadas formed a vast coalition with a view to changing the legislative union into a federal union and adopting proportional representation. Talks began with other colonies at the Charlottetown and Québec City conferences, which led to a proposal for a “Confederation.” 1865 February. Debate in Parliament on the proposed confederation. Georges-Étienne Cartier, who supported the project, vaunted the monarchical nature of the new regime, which seemed to guarantee peace and prosperity. Antoine-Aimé Dorion, the Liberal leader, denounced the proposal’s monarchical foundation, the lack of public consultation or ratification, and the setback for democracy (the members of the new Upper House were not elected but appointed by the federal government). 1866 London conference. The reciprocity treaty with the United States ended. 1867 March 29. Adoption by the British Parliament of the <i>British North America Act</i>, which united the colonies of United Canada, Nova Scotia and New Brunswick into the “Dominion of Canada,” a centralized federal constitutional monarchy made up of four provinces. Québec once again became a separate State with its own parliament and executive branch.	- Revolution erupted in Berlin. A National Assembly met in Frankfurt. Prussian and Austrian troops quelled the republican radicals. - Adoption of the Constitution. Switzerland became a federal State, which left considerable room for direct democracy (<i>Switzerland</i>). - A new Constitution established parliamentary democracy: both houses were elected by direct suffrage based on a tax qualification, by district; the privileges of the three states were abolished and freedom of expression was guaranteed (<i>The Netherlands</i>). 1849 The Frankfurt Assembly adopted a constitution that vested executive power in a hereditary emperor. The Assembly was dissolved shortly thereafter. 1850 Legislation restricting the right of suffrage (<i>France</i>). 1851 Coup d’état by Louis-Napoléon Bonaparte, who re-established universal suffrage (<i>France</i>). 1860 The chambers were granted the right of address and ministers had to defend their policies before the Assembly (<i>France</i>). 1861 Beginning of the War of Secession in the United States. 1863 Proclamation of the emancipation of slaves (<i>United States</i>). 1864 Legislation on coalitions: the right to strike was granted (<i>France</i>). 1865 The US Congress proclaimed an amnesty, marking the end of the civil war. In December, the states ratified the prohibition on slavery. 1866 Institution of two houses elected by suffrage based on a tax qualification (<i>Sweden and Denmark</i>). 1869 Constitution establishing a parliamentary monarchy (<i>Spain</i>). 1870 Defeat by Prussia and proclamation of the Third Republic (<i>France</i>). 1871 Under the presidency of Thiers, the Paris Commune was crushed (<i>France</i>).
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1874 The Québec Legislative Assembly abolished the dual electoral mandate, i.e. the possibility for elected representatives to serve as both provincial and federal members of parliament. 1875 Establishment of the Supreme Court of Canada, the country's highest court, despite protests of Québec MPs, who contested the court's jurisdiction of Québec civil law. Voting in provincial elections was carried out by secret ballot. 1878 "Coup d'état" by Lieutenant-Governor Luc de Letellier de Saint-Just, who relieved the Conservative government of Boucher de Boucherville of its functions and appointed the Liberal Opposition to the government, which was defeated three times in the House of Commons. The federal government discharged the monarch's representative in July 1879. 1893 Attempt to abolish the Legislative Council (Upper House of Québec); the proposal was defeated by a narrow majority (32 to 31). 1894 Honoré Mercier, former Prime Minister of Québec (1887-1891), and Joseph Royal, former Lieutenant-Governor of Québec, spoke in favour of a republic of Canada, free of colonial ties. 1895 Voting rights: property ownership criteria were abolished. To vote, it was sufficient to have annual income of \$300. 1897 The Liberal Party of Félix-Gabriel Marchand won the elections. Despite opposition from the Church, it had adopted in the National Assembly legislation creating a department of education, although the Legislative Council blocked the project. 1898 The federal government, headed by Liberal Wilfrid Laurier, decreed a referendum on the prohibition of alcohol, in which 81% of Quebecers opposed the measure, while a slight majority favoured it in the rest of the country. 1900 The Marchand government attempted in vain to abolish the Legislative Council. - December. The Québec Liberal Party under Simon-Napoléon Parent was reelected and remained in power until 1936. 1903 Henri Bourassa, who opposed Canada's participation in the Boer War (1899-1902), founded the Ligue nationaliste canadienne, which demanded Canada's political independence from Great Britain and promised a liberal French-Canadian nationalism. 1908 Nearly 450 000 signed a petition addressed to the House of Commons demanding the de facto equality of the English and French languages in federal public services. No response was forthcoming at the time to the initiative.	- Founding of the German Empire of William I (Second Reich). The Constitution adopted made provision, in particular, for a Reichstag (Assembly of the Emperor), elected by universal suffrage. However, the government was not responsible to the Reichstag; the emperor maintained a pre-eminent role (<i>Germany</i>). 1872 Adoption of the secret ballot (<i>England</i>). 1873 First Republic of Spain, which lasted only 10 months (<i>Spain</i>). 1874 Revision of the Constitution, which extended the right to a referendum to legislation adopted by Parliament (<i>Switzerland</i>). 1887 Revision of the Constitution: suffrage based on a tax qualification was replaced by conditions of eligibility and affluence, but still confined to men (<i>The Netherlands</i>). 1890 Universal male suffrage (<i>Spain</i>). 1893 First revision of the Constitution: suffrage based on a tax qualification was replaced by "plural universal suffrage" (<i>Belgium</i>). 1896 The Supreme Court made segregation official in <i>Plessy vs Ferguson</i> (<i>United States</i>). 1898 Adoption of universal male suffrage (<i>Norway</i>). 1906 The Diet was replaced by an assembly elected through universal suffrage. Women participated in the vote (an innovation noted throughout Europe). Czar Nicolas II dissolved the Assembly the following year (<i>Finland</i>). 1907 Universal male suffrage (<i>Sweden</i>). Women obtain the right to vote (<i>Norway</i>). Universal male suffrage was introduced in the Austrian portion of the Austro-Hungarian Empire.
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1910 The Québec parliament adopted an amendment to the <i>Civil Code</i> that prescribed bilingualism in the contracts of public utilities. 1912 Québec's territory doubled in area with the inclusion of Ungava, now the Nord-du-Québec region. - Establishment by Marie Gérin-Lajoie and Walter Lyman of the Comité provincial du suffrage féminin. 1915 The Québec Legislative Assembly unanimously adopted a motion deploring the fate of the French-speaking minority in Ontario, whose rights to instruction in French were severely curtailed by Regulation 17 adopted in 1912. In 1916, the House of Commons refused to adopt a similar motion. 1917 The Borden government had adopted in the federal Parliament legislation on conscription, despite protests from Québec and Wilfrid Laurier, Leader of the Opposition, who demanded that a referendum be held. Borden's Conservatives were reelected at the end of the year, but Québec voted massively for Laurier's party. - Women obtained the right to vote in federal elections. 1918 The Francoeur motion was submitted to the Québec Legislative Assembly, calling for Québec's withdrawal from "Confederation." A lively debate ensued, but the motion was withdrawn. 1919 First referendum held in Québec: 78.6% of voters approved a new system for regulating the sale of alcohol. 1921 The latest Census revealed that the urban population exceeded the rural population in Québec. - March. The Québec Parliament adopted the <i>Quebec Public Charges Act</i>, which implemented a basic public medical service plan. 1922 A delegation of women to the Québec Parliament, led by Marie Gérin-Lajoie, Idola Saint-Jean and Thérèse Casgrain, demanded the right to vote. 1927 In a controversial decision, the Privy Council in London granted Labrador to Newfoundland instead of Québec. 1928 The Taschereau government implemented a compulsory protection scheme in respect of industrial accidents.	1911 The <i>Parliament Act</i> confirmed the preponderance of the House of Commons (<i>England</i>). 1914 Westminster adopted the <i>Home Rule Act</i>, which granted Ireland some degree of autonomy. 1915 Universal suffrage and the right to vote for women (<i>Denmark</i>). 1917 Revision of the Constitution: universal suffrage for men (1919 for women), election by proportional representation at the national level, compulsory voting (abolished in 1970) (<i>The Netherlands</i>). - V. Carranza has adopted the "de Queretaro" Constitution (<i>Mexico</i>). 1918 Electoral reform granted the right to vote to all men and implemented limited female suffrage (30 years or over) (<i>England</i>). - Proclamation of the "German Republic" (<i>Germany</i>). - First Czech Republic, which lasted until 1938, when the Munich Accords divided up the country (<i>Czechoslovakia</i>). 1919 Elections to the Reichstag (National Assembly) through universal suffrage. Promulgation of the Weimar Constitution establishing a democratic government (responsibility of the Chancellor and ministers before the Reichstag) but granting the Reich President extended powers. Only 14 years would separate the implementation of democratic government and Hitler's seizing power in 1933 (<i>Germany</i>). - First elections through universal male suffrage (<i>Italy</i>). 1920 Universal suffrage extended to women (<i>United States</i>). 1921 Second revision of the Constitution, which implemented universal male suffrage (one man, one vote) (<i>Belgium</i>). Women obtained the right to vote (<i>Sweden</i>). 1922 Ireland became the "Irish Free State" and acquired the status of a Dominion within the Commonwealth (<i>Ireland</i>). 1928 Universal suffrage extended to women between the ages of 21 and 30 (<i>England</i>). 1929 Mexico adopted a unique democratic system. The Institutional Revolutionary Party (PRI) had been in power since Plutarco Elias Calles, who was president of Mexico from 1924 to 1928, founded it (<i>Mexico</i>).
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1931 The Dominion of Canada obtained its sovereignty (Statute of Westminster) although the British Parliament nonetheless retained the power to amend the Constitution. 1936 August. Maurice Duplessis, leader of the Union Nationale, brought an end to the long reign by the Liberals when he defeated Adélard Godbout. Voting rights: abolition of the minimum annual income. 1937 The Duplessis government adopted legislation against “communist propaganda” that undermined freedom of the press and opinion. The legislation was contested in the courts and was finally invalidated in 1957 by the Supreme Court. 1939 September. The federal government under Mackenzie King promised that it would not resort to conscription to organize the war effort. 1940 June. The federal Parliament ostracized numerous “ethnically” suspicious political groups. It also decreed conscription, but overseas service remained voluntary. The Liberal government of Adélard Godbout restored women’s right to vote in provincial elections. From 1791 to 1834, women landowners enjoyed this right, which was withdrawn under the pretext that elections, which at the time were fraught with jostling and altercations, were unsuitable for women. 1942 The King government wanted to renege on its 1939 commitment and held a plebiscite on conscription. Some 71.2% of Quebecers voted No, out of fear of British imperialism. However, Canada as a whole voted 80% in favour. Establishment by Maxime Raymond of the Bloc populaire, a political party dedicated to representing Québec’s interests. 1943 The Godbout government made school attendance compulsory. Elementary education became free. 1945 The electoral system became permanent. A senior civil servant, appointed by the government, the chief returning officer, assumed responsibility for overseeing the electoral system. Federal-provincial “reconstruction” conference in Ottawa. Having centralized various fields of jurisdiction in conjunction with the war effort, the King government announced that it wanted to monopolize all fiscal resources and implement a national economic development and social security policy. The Duplessis government protested and demanded more autonomy. 1947 The Québec Legislative Assembly unanimously adopted a motion denouncing the chronic under-representation of French-speakers in the federal public service. 1948 A group of artists, including Paul-Émile Borduas, signed the <i>Refus global</i>, a manifesto that denounced the conservatism of Québec society and pleaded for individual and artistic freedom. - André Laurendeau and other intellectuals proposed that Canada free itself of its colonial ties and become a republic. 1949 January. First teachers’ strike in Québec. February. Asbestos miners go on strike. The strikers’ cause aroused sympathy among Quebecers and a part of the clergy. May. Confrontations between the strikers and the police. Arrests and trials. The rift widened between Duplessis and the unions.	1931 Republican constitution (<i>Spain</i>). 1935 The April Constitution was adopted; it bolstered and legalized dictatorial practices (<i>Poland</i>). 1936-37 Ireland adopted a presidential system and the Eire Constitution. 1940 June. The German army occupied Paris. In London, Charles de Gaulle calls for resistance (<i>France</i>). 1942 In Washington, 26 countries signed the Atlantic Charter. 1943 First Québec City Conference, which Churchill and Roosevelt attended. 1944 Women obtained the right to vote (<i>France</i>). - Second Québec City Conference. 1946 Women obtained the vote and a referendum was held to establish the Republic (<i>Italy</i>). 1948 Women obtained universal suffrage (as early as 1919 in municipal elections) (<i>Belgium</i>). - Adoption by the UN of the <i>Universal Declaration of Human Rights</i>. 1949 Adoption of the Constitution of the Federal Republic of Germany. The Constitution amended, among other things, the system of proportional representation by introducing a 5% threshold and established a constitutional court to oversee legality. Bavaria refused to ratify the Constitution as it believed that it would lose its historic rights.
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- Appeals to the Privy Council in London were abolished. The Supreme Court became Canada's highest court. 1950 Québec MLAs approved the adoption in 1948 of the fleurdelisé flag as the official Québec flag. 1954 Québec established its own income tax. 1956 The Royal Commission of Inquiry on Constitutional Problems, set up by the Duplessis government in 1953, submitted its report. It noted that Canada was becoming more centralized, the federal spirit was being lost to political "unification." It recommended, among other things, that Supreme Court justices be appointed jointly by the provinces and the federal government and that the federation establish a genuine constitutional tribunal, based on the German and Austrian models. The population of Québec reached 4 628 000; 63.3% of Quebecers lived in urban areas. Between 1944 and 1956, Québec built 3352 schools. 1957 For the first time in Canada, the British monarch presided over the official opening of a session of the federal Parliament. 1958 The Progressive Conservatives under John Diefenbaker won the federal election with a strong majority. It was the first time since 1911 that Quebecers had voted so heavily for the Conservatives. 1959 September. Duplessis, deeply affected by the "natural gas" scandal that tarnished his government in 1958, died. 1960 The Liberals under Jean Lesage took power. Beginning of the Quiet Revolution, a period of social change. 1963 The Lesage government adopted the first legislation in Canada limiting election campaign spending. The voting age was lowered to 18. The chief returning officer was to be appointed henceforth by resolution of the Legislative Assembly. 1964 On a motion by Claire Kirkland-Casgrain, Québec's first woman MLA, the Québec Legislative Assembly amended the <i>Civil Code</i> to end the legal incapacity of married women. 1965 The <i>Civil Service Act</i> established an independent, modern public service that enjoys the right to unionization and the right to strike. 1966 February. Prime Minister Daniel Johnson expressed the desire to abolish the position of lieutenant-governor. 1967 July. Visit to Québec by General Charles de Gaulle. At Montréal City Hall, he cried "Vive le Québec libre!" Prime Minister Johnson perceived the remark as supporting the freedom of the Québec people to choose its destiny and its unquestionable right to self-determination. - René Lévesque, a former minister in the Lesage government, founded the Mouvement souveraineté-association. November. The States-General of French Canada began by adopting a resolution solemnly asserting the right to self-determination of the French-Canadian people. Québec delegates overwhelmingly supported the resolution, but delegates from Ontario, Acadia and western Canada were divided.	- Eire (Ireland) became a republic. - Adoption in Rome of the <i>European Convention on Human Rights</i>. 1954 The Supreme Court declared racial segregation in schools unconstitutional. (<i>United States</i>). 1956 Establishment of the Constitutional Court (<i>Italy</i>). 1962 French voters said Yes to the election of the President of the Republic by universal suffrage. 1964 President Lyndon B. Johnson signed into law the civil rights legislation proposed by his predecessor (<i>United States</i>). 1965 First presidential election by universal suffrage (<i>France</i>). 1966 Adoption by the UN of two covenants protecting human rights, one pertaining to political rights, the other to economic and social rights.
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1968 March. The <i>Public Protector Act</i> was officially assented to. Québec now had an ombudsman. July. In conjunction with preparations for the constitutional conferences, the Johnson government submitted a series of proposals, one of which was that Québec become a republic within a new Canadian federal union. In September, the day before he died, he publicly confirmed the scope of this proposal. The Legislative Council was abolished and the Québec Legislative Assembly became the National Assembly, a one-chamber parliament. 1969 Appointment of the first Québec public protector. The Amerindians obtained the right to vote. March. End of the States-General of French Canada. The national meeting ended with the adoption of an ambitious political and social renewal program for Québec. Among other things, it was proposed that Québec adopt a written constitution enshrining the rights of Quebecers, asserting the right of Quebecers to self-determination, recognizing their right to initiate referendums and establishing a constitutional court to oversee constitutional and electoral legitimacy. 1970 October. The Front de libération du Québec took as hostages Pierre Laporte, Québec Minister of Labour, and an English commercial attaché. The Trudeau government invoked the <i>War Measures Act</i>. Civil liberties were suspended and numerous arrests ensued. Minister Laporte was assassinated. November. Québec implemented universal, free health care. 1971 Women were admitted to juries. 1972 December. The Liberal government of Robert Bourassa redrew the electoral map. Numerical inequalities between urban and rural ridings were corrected and the territories of almost all ridings were redrawn. 1973 Establishment of the Conseil du Statut de la femme du Québec 1974 The federal Parliament adopted legislation governing contributions to candidates and political parties and limiting election expenses. July. The National Assembly adopted Bill 22, the <i>Official Language Act</i>, which declared French the official language of Québec. 1975 Adoption of the Québec <i>Charter of human rights and freedoms</i>, which protects basic freedoms and recognizes social rights. The Commission des droits de la personne oversees the application of the Charter. 1977 Adoption of the <i>Act to govern the financing of political parties</i>. Only individual contributions are allowed, part of which are reimbursed by the government. The title of Chief Returning Officer was changed to Chief Electoral Officer, appointed by the Prime Minister and supported by two-thirds of the members of the National Assembly. August. The <i>Charter of the French language</i> was adopted.	1969 The voting age was lowered to 18 (<i>England</i>). 1970 Legislation governing referendums; first regional elections (<i>Italy</i>). 1971 Women obtained the right to vote in federal elections (<i>Switzerland</i>). 1974 Legislation setting the legal age of consent at 18. Broadening of the constitutional council to 60 deputies or senators (<i>France</i>). 1975 Referendum on the United Kingdom's entry into the Common Market. Two umbrella committees represented the two options in question.
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1978 Adoption of framework legislation on referendums, which regulated eligible expenses in order to ensure fair play and the balance of electoral forces, headed by province-wide committees. 1979 Judges and prison inmates obtained the right to vote. 1980 May. Referendum on sovereignty-association. Nearly 60% of the voters rejected René Lévesque's option. 1981 November. The nine provincial premiers and the federal prime minister agreed on a proposal to repatriate the Canadian Constitution. Québec was excluded from the negotiations and presented with a <i>fait accompli</i>. The National Assembly adopted a resolution of protest against the proposal, which reduced its powers in respect of language and culture and deprived it of its veto over constitutional reform. 1982 April 17. Official signing of the <i>Constitution Act, 1982</i>, despite opposition from Québec, which lost some of its historic rights. The Act gives the higher courts the power to invalidate legislation in the name of a charter of rights and introduces a constitutional amending formula. However, nothing has changed with respect to federal institutions, e.g. the appointment of senators and judges, and the status of the constitutional monarchy has been bolstered. - Amendment of the Québec <i>Charter of human rights and freedoms</i>. The Charter became preponderant and rights to equality were broadened. 1983 January. The administration of the electoral system was unified under the authority of the Chief Electoral Officer. 1984 The Commission de la représentation électorale of the National Assembly recommended that Québec adopt the "proportional territorial" representation method, which would combine the existing first-past-the-post system with a proportional representation formula in certain additional ridings. The proposal was not implemented. - The National Assembly reformed its rules of procedure. More extensive public consultation would be carried out in respect of draft legislation and policy through parliamentary committees. - For the first time, the Supreme Court invalidated part of a Québec statute pursuant to the <i>Canadian Charter of Rights and Freedoms</i> adopted in 1982. The justices recognized that the Charter seeks expressly to limit the scope of Québec's language policy. 1987 June. The provincial premiers and federal prime minister signed the Meech Lake Accord, intended to rectify Québec's "exclusion" from the 1982 constitutional reform. - October. A referendum was held in Nouveau-Québec, in which residents voted on a new aboriginal system of local government. 1989 The minimum period of residence in Québec for voting purposes was lowered from 12 months to six. The federal government set up a Royal Commission on Electoral Reform and Party Financing, which submitted its report in 1991. - June. The Human Rights Tribunal was established.	1978 Approval by referendum of the Constitution, which restored representative institutions after 39 years of Francoist regime. The Constitution instituted a parliamentary monarchy and recognized the country's nationalities, which may establish themselves in autonomous communities (<i>Spain</i>). 1979 The European Parliament would henceforth be elected by universal suffrage. 1983 Reworking of the Constitution in favour of human rights (<i>The Netherlands</i>). 1989 The wind of freedom blew across the former Eastern Block countries. First post-communist legislative elections (<i>Poland</i>).
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1990 June. The Meech Lake Accord was not ratified in time and lapsed. In the National Assembly, Prime Minister Robert Bourassa asserted that Québec is a distinct society that is free and capable of assuming its destiny. September. The National Assembly established the Commission on the Political and Constitutional Future of Québec, which submitted its report in March. Two avenues were open to Québec: more decentralized federalism or sovereignty. 1991 June. The National Assembly asserted Québec's right to self-determination and adopted the <i>Act respecting the process for determining the political and constitutional future of Québec</i>, which stipulated that the government must hold a referendum on Québec sovereignty by October 1992 at the latest. Two commissions examined various questions pertaining to Québec sovereignty or any formal offer of a new constitutional partnership made by the rest of Canada. 1992 October. Quebecers and other Canadians were consulted on the Charlottetown Accord, another constitutional agreement. Québec held its own referendum, which replaced the one stipulated in the June 1991 legislation. Over 57% of Quebecers said No. 1995 Referendum on Québec sovereignty accompanied by an offer of partnership with Canada. The No side won by a narrow margin, with 50.6% of the votes. Some 94% of registered voters turned out for the referendum. 1996 November. The National Assembly adopted a motion demanding the abolition of the position of lieutenant-governor, a vestige of the country's colonial past, or, failing that, that the federal cabinet appoint the person that the National Assembly democratically designates. The federal cabinet did not act on the demand. - The National Assembly adopted the <i>Act respecting administrative justice</i>, which created a unified administrative jurisdiction and subjected public administration to the duty to act fairly. 1997 Coming into force of the <i>Act to amend the Election Act and other legislative provisions as regards the permanent list of electors</i>. September. First Parliamentary Conference of the Americas, hosted by the National Assembly. Over 400 parliamentarians from 28 countries in the Americas discussed the future of democracy from the standpoint of the integration of national economies. October. The Supreme Court invalidated part of the <i>Election Act</i>. The Court approved the principle of fair play but felt that the spending limits placed on third parties in election or referendum campaigns were too restrictive. Less restrictive legislation was adopted in October 1998. 1998 August. In a reference requested by the federal government, the Supreme Court of Canada recognized that Québec sovereignty is a legitimate political option that can be achieved within the framework of Canadian constitutional law, following a favourable referendum vote.	1990 Unification treaty (<i>Einigungsvertrag</i>). Under article 23 of the Constitution, East and West Germany were reunited. First elections to the <i>Bundestag</i> in united Germany (<i>Germany</i>). - First post-communist democratic elections (<i>Hungary, Poland, Czechoslovakia, Romania and Bulgaria</i>). - Adoption of a new constitution in 1990 and 1991 (<i>Hungary, Poland, Czechoslovakia, Romania and Bulgaria</i>). 1993 The Australian government set up the Republic Advisory Committee, with a view to drawing up a republican constitution for the country (<i>Australia</i>). - The Republic of South Africa adopted a new constitution officially ending apartheid and forming a multilingual federation. - The population of the Russian Federation approved by referendum a new constitution that implemented a presidential regime.
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