QUEBEC, CANADA AND THE FIRST NATIONS: THE PROBLEM OF SECESSION

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INTRODUCTION

This brief foreword is intended to provide the historical and institutional context for the questions of law and politics discussed in the papers that follow. The focus will be on the way that the constitutional convention of responsible government and the nature of Canadian federalism establish both the framework for the decision of the Supreme Court of Canada in the Quebec Secession Reference[1] and the context in which Canada must respond to the continuing demands of Quebec and the First Nations for sovereignty.

I. THE QUEBEC SECESSION REFERENCE

In October 1995, the separatist Parti Québécois, holding a majority in the National Assembly, Quebec's provincial legislature, narrowly lost a popular referendum vote on the question of whether it should start a process leading to secession from Canada.[2] In September 1996, with political and legal ferment continuing on the issue, the government of Canada referred three questions to the Supreme Court under its statutory jurisdiction to render advisory opinions on "important questions of law or fact."[3] The questions were: First, whether Quebec could secede from Canada unilaterally pursuant to Canadian constitutional law; second whether Quebec could secede unilaterally under international law; third, if there were a conflict between Canadian and international law on this point, which should take precedence.[4] These questions were argued in February 1998 by the government of Canada; by court-appointed counsel appearing as *amicus curiae* for the Province of Quebec, which declined to lend legitimacy to the proceedings by appearing; and by counsel for thirteen interveners. The interveners were four provinces

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1. Reference re Secession of Quebec, [1998] 2 S.C.R. 217 [hereinafter *Quebec Secession Reference*].

2. *See* H.W. MacLauchlan, *Accounting for Democracy and the Rule of Law in the Quebec Secession Reference*, 76 CAN. B. REV. 155, 157-60 (1997).

3. R.S.C, ch. S-26, § 53 1985) (Can.). *See* MacLauchlan, *supra* note 2, at 160-62.

4. *See* Order in Council P.C. 1996-1497 (Sep. 30, 1996), *cited in Quebec Secession Reference*, [1998] 2 S.C.R. 217, para. 2.

and territories, three First Nations tribal entities, other interest groups, and a number of individuals.[5]

The Supreme Court delivered its decision in August 1998,[6] finding first that, contrary to the arguments of the *amicus*, the Court had jurisdiction to answer the questions posed, both under the terms of its jurisdictional statute and because those questions were justiciable.[7] The Court then held that, upon a favorable and clear majority vote on a clearly stated question calling for secession, the ability of Quebec to secede would be legitimated and the process of secession would, in effect, be triggered. That process would be a long and complex negotiation in which the federal government and the rest of the provincial governments of Canada would be bound to participate. This legal conclusion, the Court suggested, was simply the framework for what must ultimately be a political decision.[8] Finally, the Court said that there was no unilateral right to secede under international law because Quebec was not a "people" in the sense of that body of law and that a *de facto* secession by a unilateral declaration of independence would depend for its effectiveness on whether the international community recognized the result. International recognition, in turn, might depend upon whether the government of Canada and the rest of Canada recognized the result. In any case, the possibility of such a secession would not retroactively create a unilateral right to secede.[9]

II. THE CANADIAN CONSTITUTIONAL FRAMEWORK

The constitutional framework in which the Canadian Supreme Court reached its decision and in which its implications will be played out is marked by four features that differ significantly from the constitutional structure of the United States. First, in both the federal and provincial governments, executive power is wielded in the Queen's name by the leader of the majority party in the legislature. Second, at both levels of government, the legislature is the sovereign power and its authority is ultimately supreme on most issues within its constitutional competence. Third, the power of the judiciary to measure executive and legislative acts against constitutional standards is still evolving. Fourth, in the Canadian legal system, the balance of power is significantly weighted in favor of the ten provinces.

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5. *See Quebec Secession Reference*, [1998] 2 S.C.R. 217.
6. *See id.*.
7. *See id.* at para. 4-31.
8. *See id.* at para. 32-108.
9. *See id.* at para. 109-46. Since the Court found no conflict between Canadian and international law on the right to unilateral secession, it was unnecessary to reach the third question referred. *See id.* at para. 147.

A. Historical Context

These features of the Canadian Constitution are the product of more than 200 years of evolution within the British colonial empire from which the United States in effect seceded in 1776 with its own unilateral declaration of independence. The British empire was itself a kind of federal structure, but its system of governance was very different from that which emerged in the United States in 1789 as the lasting result of the American Revolution. Under the unwritten British Constitution of the 18th Century, the monarch (king or queen) was the head of state, but Parliament was recognized as both sovereign and supreme. The King through his Privy Council governed each colony directly by virtue of the royal prerogative. The King's ministers, who actually formulated policy and exercised the executive power, were ordinarily chosen by him from the majority party in Parliament, and Parliament could and did legislate freely for the colonies on the basis of the prerogative. The courts were appointed by and subservient to the machinery of the prerogative and were viewed as merely another voice of the Crown. Appeals from colonial courts lay to the Privy Council, which also directly reviewed colonial legislation. The Privy Council measured both judicial and legislative acts against the royal charters and other prerogative instruments that governed the colonies. The principle of separation of powers, so fundamental to the structure of the United States Constitution, was intended by the American Framers as a direct rejection of this British model.[10] In contrast to this revolutionary institutional change, the institutions of Canadian government evolved in response to gradual changes in the British system after 1776.

B. Executive and Legislative Power

Today in Canada, though the British Parliament surrendered all claim to legislative power in the Canada Act of 1982,[11] the Queen remains as head of state, acting through her appointed Governor General. Since the mid-19th Century, the constitutional convention of responsible government, in effect in Britain by 1832, has meant that the Governor General must appoint as prime minister the leader of the majority party in the Canadian House of Commons and may act only with the prime minister's advice. The prime minister designates the other ministers, who with the prime minister form the

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10. *See* L.K. Wroth, *Notes for a Comparative Study of the Origins of Federalism in the United States and Canada*, 15 ARIZ. J. INT'L & COMP. L. 93, 94-111 (1998), and sources there cited.

11. *See* Canada Act, 1982, ch. 11 (Eng.), *in* R.S.C., App. II, No. 44 (1985) (Can.).

"government" and remain in power as long as their actions can command the confidence of a majority of the House. The form of government in each province follows this model, with the Queen's authority delegated to a Lieutenant Governor and effectively wielded by a majority government led by a premier. Thus, the executive and legislative powers are joined in the hands of the legislative majority at both levels of government.[12]

C. Judicial Power

The Privy Council remained the court of last resort for all Canadian appeals until 1949. Although the Supreme Court of Canada since that year has had final appellate jurisdiction, its role until recently was, with two major exceptions, the more limited one accorded the courts by the British Constitution.[13] The first exception was the reference jurisdiction exercised in the Quebec Secession Reference.[14] That jurisdiction, adopted when the Court was created by Canadian statute in 1875, carries forward one of the roles of the British Privy Council, which provided advice to the King and, through him, to his various ministers and their bureaucracies.[15] Thus, as the Quebec Secession Reference shows, the Supreme Court, unhindered by strict American notions of justiciability, can play a decisive role on major issues of public policy.

The second exception derives also from the Privy Council's supervisory role and from the nature of Canadian federalism. Canada became a federal system with the enactment by the British Parliament in 1867 of the British North America Act, now the Constitution Act of 1867.[16] In that instrument, elaborate provisions distributing legislative powers between the federal and provincial governments[17] had to be applied by the courts to determine the validity of legislation. Thus, the courts exercised a limited form of judicial review in determining whether a particular legislative act was within the power of the enacting government. If an act was valid in those terms, however, the principle of Parliamentary supremacy meant that there was no other limit on the legislative power.[18]

More recently, the scope of judicial review in Canada has been significantly expanded. The Constitution Act of 1982, enacted as part of the

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12. *See* 1 P. HOGG, CONSTITUTIONAL LAW OF CANADA §§ 9.1-9.6 (4th ed., 1997).

13. *See id.*, §§ 8.1-8.8.

14. *Quebec Secession Reference*, [1998] 2 S.C.R. 217.

15. *See* R.S.C., c. S-26, § 53 (1985) (Can.), *enacted by* S. C., c. 11 (1875) (Can.). *See* 1 P. HOGG, *supra* note 12, § 8.6.

16. 30 & 31 Vict., (1867) ch. 3 (Eng.), *in* R.S. C., App. II, No. 5 (1985) (Can.).

17. *See id.* §§ 91, 92.

18. *See* 1 P. HOGG, *supra* note 12, §§ 5.5, 12.2.

Canada Act of 1982, contained the Canadian Charter of Rights and Freedoms, an elaborate statement of individual rights that gives them constitutional status as supreme law. The Charter makes clear that the courts are the forum in which these newly entrenched rights are to be vindicated.[19] This recognition of broad judicial review has given the Supreme Court of Canada an important new role, which it has exercised actively and extensively as it continues to develop the full implications of this expanded power.[20] The principle of Parliamentary supremacy continues to be recognized, however, in a provision of the Charter permitting a legislative body to override many of the Charter rights by an express statutory declaration of that intent.[21]

D. Federalism and the Nation

The distribution of powers provisions in the 1867 Act were intended by the drafters ("the fathers of confederation") to bind together the hitherto separate provinces of Canada in a secession-proof union with a strong central government. The purpose was to avoid the unfortunate behavior of the dysfunctional states to the south that had resulted in the just-concluded American Civil War.[22] Over the next 80 years, with the British Empire still firmly in place, the Privy Council, described by a Canadian scholar as "the wicked stepfathers of confederation,"[23] radically altered that original plan. As a result, the Canadian federal system is characterized by a far greater decentralization of power than has developed in the federal system established by the United States Constitution. The Supreme Court of Canada has to a large extent followed the lead of the Privy Council and has developed an elaborate body of constitutional law in the process.[24]

After 1867, although the Privy Council retained its full power of judicial review, Britain exercised its legislative and executive power over Canada with an ever lighter hand. The Imperial Conference of 1930 and the resultant Statute of Westminster gave Canada's national status *de facto* recognition,

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19. Constitution Act, Part I, §§ 1-34 (1982) (Can.), enacted as Schedule B of Canada Act, 1982, ch. 11 (Eng.), *in* R.S.C., App. II, No. 44 (1985) (Can.). For the provisions declaring the supremacy of the Constitution, including the Charter, and establishing judicial review, see *id.* §§ 52, 24.

20. *See e.g.*, Regina v. Oakes, [1986] 1 S.C.R. 103; Vriend v. Alberta, [1998] 1 S.C.R. 493. *See generally*, HOGG, *supra* note 12, §§ 33.1-33.4.

21. *See* Constitution Act, Part I, § 33 (1982) (Can.); Ford v. Quebec (Attorney General), [1988] 2 S.C.R. 712.

22. *See* HOGG, *supra* note 12, § 5.3(a); THE CONFEDERATION DEBATES IN THE PROVINCE OF CANADA 44 (P. Waite, ed., 1963) (remarks of Hon. John Alexander Macdonald, Feb.6, 1865).

23. *See* HOGG, *supra* note 12, § 5.3(c) n.65, *quoting* E. A. Forsey.

24. *See id.*, § 5.3(c); *see e.g.*, Citizens Insurance Co. of Canada v. Parsons, 7 App. Cas. 96 (P.C. 1881); In re Board of Commerce Act, [1922] A.C. 191 (P.C.); R. v. Crown Zellerbach Ltd., [1988] 1 S.C.R. 401; R. v. Hydro-Quebec, [1997] 3 S.C.R. 213.

although the British Parliament retained the sole power to amend the British North America Act, the basic constitution of Canada. Full autonomy was delayed for another 50 years by an inability to agree upon a formula by which the constitution might be amended within Canada.[25] Finally, in the Constitution Act of 1982, as part of the surrender by the British Parliament of all legislative authority over Canada, the Canadian Constitution was amended in a variety of respects, and a formula agreeable to nine of the ten provinces and the federal government was adopted. Quebec was the sole hold-out, arguing that the formula did not give appropriate weight to its special need to protect its French culture, language, and law.[26]

III. QUEBEC AND THE FIRST NATIONS

A. Quebec

In fact, the legislation with which Britain gradually loosened the chains binding its empire had from the beginning recognized the independent status of Quebec. The Royal Proclamation of 1763,[27] with which Britain established a form of government for all of the French colonies ceded to it as a result of the colonial wars that ended in that year, recognized Quebec as a separate province. After a period of confusion, the Quebec Act of 1774[28] succeeded in preventing the province from joining the impending American Revolution by declaring that the French civil law and Roman Catholic religion should be preserved and protected. Subsequent legislation concerning the organization and structure of the Canadian provinces, including the British North America Act of 1867, recognized the separate nature and status of Quebec.[29] Indeed, some have interpreted the work of the "wicked stepfathers" in the nineteenth and early twentieth centuries as a recognition that the Act was a commitment to Quebec to establish strong provincial authority that would allow the province to maintain a special status within the confederation.[30]

The Quebec separatist movement had its modern origins with the 1960 provincial election, which brought to power a nationalist Liberal party that launched the "Quiet Revolution," an ambitious program of social and

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25. *See* Wroth, *supra* note 11, at 119-20, and sources there cited.

26. *See* Constitution Act, Part V §§ 1-34 (1982) (Can.). *See generally* 1 HOGG, *supra* note 12, §§ 4.1-4.8.

27. *See* Royal Proclamation of October 7, 1763, R. S. C., App. II, No. 1 (1985) (Can.).

28. 14 Geo. 3, ch. 83 (1774) (Eng.). *See generally* Wroth, *supra* note 11, at 112, and sources there cited.

29. *See* Wroth, *supra* note 11, at 113-14, 117-19; British North America Act, 30 & 31 Vict. (1867) Ch. 3 (Eng.) in R.S.C., App. II, No. 5 (1985) (Can.).

30. *See, e.g.*, HOGG, *supra* note 12, § 5.3(c), nn. 64, 65.

economic reforms and initiatives. Previously more of a literary and sentimental concept, Quebec nationalism had attained political energy with the coming of age of the post-war generation. Since the defeat of the Liberals in 1966, the Parti Québécois, founded by René Lévesque, has been the leader of the separatist movement through periods of street violence, backlash, and ascendency. After the defeat of a 1980 Quebec referendum calling for separation, the federal government of Prime Minister Pierre Trudeau succesfully pressed its own agenda to attain patriation of the Canadian constitution and entrenchment of a Bill of Rights.[31]

Enactment of the Constitution Act of 1982 without the participation of Quebec was a defining moment for Quebec separatism. In two critical reference decisions, the Supreme Court of Canada held that unanimous consent of the provinces was not required for enactment of the Constitution Act of 1982 and that recognition of the duality of French and English culture inherent in Canadian federalism did not amount to the degree of acceptance or recognition necessary to establish a convention giving Quebec an independent veto power over constitutional amendments that affect the amending power.[32]

After adoption of the Constitution Act, Quebec's politicians worked with the federal government to develop Constitutional amendments that would recognize Quebec's special cultural and political status. The Meech Lake Accord, presented to the provincial legislatures in 1987 for ratification under the new amendment procedures, failed in 1990.[33] The Charlottetown Accord, a similar but more far-reaching set of amendments, was withdrawn by the federal government after a national advisory referendum rejected it in 1992.[34] Strengthened by these rejections, the Parti Québécois then took the political steps that led to the 1995 referendum on sovereignty.[35]

B. The First Nations

Much of Canada's political and legal dialogue for a century or more after 1867 could be summed up in a phrase that was used in the 1960s and 1970s to describe the nature of the cultural and political relationship of English Canada and French Quebec—"the two solitudes."[36] Missing, however, in that

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31. *See generally,* K. MCNAUGHT, THE PENGUIN HISTORY OF CANADA 298-356 (1988).

32. Re Resolution to Amend the Constitution, [1981] 1 S.C.R. 753 [hereinafter *the Patriation Reference*]; *Quebec Veto Reference*, [1982] 2 S.C.R. 793.

33. *See* Hogg, *supra* note 12, at § 4.1(c) nn.37-40.

34. *See id.* at nn. 41-46.

35. *See supra* text accompanying note 2.

36. *See, e.g.,* C. TAYLOR, RECONCILING THE SOLITUDES: ESSAYS ON CANADIAN FEDERALISM AND NATIONALISM 24, 39 (1993).

formulation was any reference to Canada's Aboriginal peoples—the First Nations. In the Royal Proclamation of 1763,[37] the Indian nations were recognized as "autonomous political units living under the Crown's protection while retaining their internal political authority and their territories," which could not "be granted or appropriated by the British without Indian consent."[38] As Canada's European population swelled after the American Revolution and in the first years of the 19th century, the British government began a systematic practice of purchasing Indian land through treaties. After 1830, this practice was accompanied by a policy of moving the Indians physically from the purchased lands to reserves, primarily in Upper Canada and lands to the north and west. Meanwhile, beginning in the 1850s, a policy of "enfranchisement" reflected a conscious effort on the part of the British and provincial governments to hasten assimilation by drawing Indians away from the culture of tribal life and weakening or dismantling Aboriginal governments.

Both initiatives were accelerated after the adoption of the British North America Act in 1867[39]—a process in which there was no Aboriginal representation, or even presence. The Act vested in the new federal government power over "Indians, and lands reserved for the Indians,"[40] in effect transferring to the federal government, the power—and responsibility—previously exercised by the British Crown. Thus, the special status recognized for Aboriginal peoples by the 1763 Proclamation was carried forward.

The process of treaty-making by the federal government continued in an increasingly systematic and complex way through the first quarter of the twentieth century. Serious questions were raised concerning implementation of the treaties, but in large measure the government's focus shifted from one of dealing with tribal nations as political entities to comprehensive management of Aboriginal affairs through the Indian Act, enacted in 1876 and, with extensive amendments adopted in 1951, still in force today.[41] This measure, administered by the federal Department of Indian Affairs, comprehensively regulates the status, governance, legal rights, and benefits of those Aboriginal peoples within its scope.

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37. Royal Proclamation of October 7, 1763, R. S. C., App. II, No. 1 (1985) (Can.)

38. 1 REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES 116 (1996). The discussion that follows is based on chapters 6-9 of the Report; *see also* 1 P. HOGG, *supra* note 12, §§ 27.1-27.11.

39. *See* 30 & 31 Vict., (1867) ch. 3 (Eng.), *in* R.S. C., App. II, No. 5 (1985) (Can.).

40. *Id.* § 91(24). As to Aboriginal non-participation, see B. Ryder, *The Demise and Rise of the Classical Paradigm in Canadian Federalism: Promoting Autonomy for the First Nations*, 36 MCGILL L.J. 308, 314 (1991).

41. R.S.C., c. I-5 (1985) (Can.).

Growing strength and cohesiveness on the part of Aboriginal peoples has led to increased public, political, and judicial awareness of Aboriginal issues and needs since 1970. In 1973, the Supreme Court of Canada recognized and expanded aboriginal rights in land based on use and occupancy prior to European settlement.[42] Subsequently, the federal government abandoned earlier efforts to complete the assimilation of Aboriginal peoples and began to address Aboriginal land claims. Aboriginal participation in the political process that led to enactment of the Constitution Act of 1982, resulted in significant provisions in that Act that for the first time entrenched Aboriginal rights and gave them express constitutional protection.[43] The Supreme Court of Canada has been actively engaged in the application and interpretation of these Constitutional provisions in cases involving Aboriginal rights to traditional land uses or practices, Aboriginal title to land, and Aboriginal rights to self-government.[44]

Constitutional discussions since 1982 have reflected increasing involvement of the Aboriginal peoples. The Meech Lake Accord failed in 1990, in part because of Aboriginal opposition based on the absence of any provision for Aboriginal concerns in the document[45]. A later attempt to address the same issues in the Charlottetown Accord of 1992[46] included crucial provisions recognizing the Aboriginal right of self-government and calling for inclusion of that right in the Constitution. Despite defeat of the Accord, the political viability of the idea of Aboriginal self-government was established. The massive *Report of the Royal Commission on Aboriginal Peoples*, issued in October 1996,[47] exhaustively reviewed the historical and cultural context of the Aboriginal peoples and laid out an extensive agenda for continuing social and Constitutional change. Meanwhile, in a very different kind of development, Canada and the Inuit people of the former Northwest Territories on April 1, 1999, implemented a 1993 land claims settlement agreement by carving out from the Territories a new political unit, the Territory of Nunavut.[48] Today, a more apt phrase to describe the ethnic, demographic, and political makeup of Canada would be "the three cultures."

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42. Calder v. Attorney General of British Columbia, [1973] S.C.R. 313.

43. Constitution Act, §§ 25, 35, 35.1 (1982) (Can.). *See* Ryder, *supra* note 40, at 316-18.

44. *See, e.g.*, R. v. Sparrow, [1990] 1 S.C.R. 1075; R. v. Pamajewon, [1996] 2 S.C.R. 821; Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010.

45. *See* 1. P. HOGG, *supra* note 12, § 4.1(c), at nn. 37-40; 1 REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES 209-12 (1996).

46. *See* 1 P. HOGG, *supra* note 12, § 4.1(c), at nn. 41-46.

47. REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES (1996).

48. R.S.C., c. 28, 29, (1993) (Can.) as amended. *See generally* C. Marecic, *Nunavut Territory: Aboriginal Governing in the Canadian Regimes of Governance* (May 1998) (unpublished manuscript, on file with author).

CONCLUSION

In the fall of 1998, political leaders in both the United States and Canada significantly misread the public will on major issues. In Washington, the Republican leadership of the House of Representatives, ignoring the consistent voice of the polls, moved inexorably toward the impeachment of President Clinton.[49] In the Province of Quebec, Premier Lucien Bouchard of the Parti Québécois, apparently emboldened by the Supreme Court's Quebec Secession Reference decision, [50] called an election to establish a mandate for yet one more referendum on the question whether the province should secede from Canada. The voters, apparently less enthusiastic about the prospect than their leaders, on November 30 denied the Parti Québécois a plurality of the popular vote and reduced the party's legislative majority.[51]

The November 1998 Quebec election result has temporarily shifted the constitutional and political focus from secession to the practical issues of coexistence between Quebec and the rest of Canada. Recent commentaries suggest a variety of approaches to the longer term constitutional issues.[52] Meanwhile, after extensive discussion and negotiation, the federal government and the provinces on February 4, 1999, agreed upon a "Framework to Improve the Social Union for Canadians" designed to address a variety of intergovernmental issues and to define new methods of exercising the federal spending power.[53] Plainly, as further discussions of constitutional change proceed, the status and participation of the Aboriginal peoples remain critical.[54]

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49. *See* "Impeachment of William Jefferson Clinton, President of the United States," H. Rep. 105-830, 105th Cong., 2d Sess. (1998).

50. *Quebec Secession Reference*, [1998] 2 S.C.R. 217.

51. The Parti Québécois majority in the Quebec National Assembly was reduced from 77 to 75 seats, and the party won 42.9 percent of the popular vote, compared to 43.6 per cent for the anti-separatist Liberals and 11.6 per cent for the middle-of-the-road Action Democratique party. OTTAWA CITIZEN, Dec. 1, 1998 (visited August 18, 1999) <http://www.ottawacitizen.com>.

52. *See, e.g.*, J. Woehrling, *Unexpected Consequences of Constitutional First Principles*, 7 CANADA WATCH, Nos. 1 and 2, at 18 (Jan.-Feb. 1999); B. Cameron, *A Partnership Proposal*, 7 CANADA WATCH, Nos. 1 and 2, at 25. *See also* Samuel V. LaSelva, *Divided Houses: Secession and Constitutional Faith in Canada and the United States*, 23 VT. L. REV. 771 (1999); Jean François Gaudreault-DesBiens, *The Quebec Secession Reference and the Judicial Arbitration of Conflicting Narratives about Law, Democracy, and Identity*, 23 VT. L. REV. 793 (1999).

53. A Framework to Improve the Social Union for Canadians: An Agreement between the Government of Canada and the Governments of the Provinces and Territories (Feb. 4, 1999).

54. *See, e.g.*,Claude-Armand Sheppard, *The Cree Intervention in the Canadian Supreme Court Reference on Quebec Secession: A Subjective Assessment*, 23 VT. L. REV. 845 (1999).

If the framework of the Quebec Secession Reference decision[55] is to be used, it will be in a setting where the ten provinces of Canada have a strong legal and political position *vis-à-vis* the federal government. Both levels of government are driven by a constitutional process in which the political leaders are responsible to legislative majorities. A means for recognition of the First Nations' role must be established in the very process in which Quebec's claims to self-determination must finally be heard and understood by the nation as a whole. The prime minister and the provincial premiers collectively have the power to rearrange Canada to respond to the needs of its many regions and cultures, if they have the wit and leadership ability to determine and mold the public will. Through the wise exercise of this power, they can make Canada a model for the world in the resolution of such issues.

55. Quebec Secession Reference, [1998] 2 S.C.R. 217.