

A CONSTITUTIONAL CRISIS IN CANADA:
CONFRONTING THE PROSPECT OF QUEBEC SECESSION

by George S. Isaacson*

Like the fissured glacial tongue of a continental ice pack, pushing inexorably into the sea, Quebec edges towards independence from the rest of Canada. The birth of an iceberg is not a peaceful event. Its creation is preceded by the shrill, clapping sounds of the cracking ice sheet; those noises, in turn, are followed by loud crashes and thunderous rumbles as the ice shelf splits, sending a new island of ice crashing into the sea and roiling the waters around it. Nations are often born in turbulence as well. If Quebec becomes the newest country on the North American continent, its path to nationhood may not be a gentle birth.¹

Canada is confronting a constitutional crisis, and its implications are far-reaching. The governing party in Quebec, the Parti Québécois, is committed to the cause of Quebec sovereignty; and Quebec Premier, Lucien Bouchard, unswervingly asserts that the people of Quebec have the right of self-determination and can decide, on their own, whether to secede from the rest of Canada. The federal government, led by Liberal Party Prime Minister Jean Chretien, is equally adamant that no province has the right to declare its independence unilaterally. Chretien argues that Quebec can leave the Canadian confederation only after a protracted process that includes an amendment to the Canadian Constitution and a complex set of negotiations over a wide range of issues with the other provinces and the national government.

In 1996, the federal government sought an advisory opinion² from the Supreme Court of Canada by posing a series of questions³ to the Justices inquiring whether, under the Canadian

¹ The analogy between the birth of an iceberg and Quebec's possible separation from Canada may be especially appropriate (or at least excusable) given Canada's premier international stature regarding the scientific study of icebergs and the importance of that project to the Canadian government:

"Ice is one of Canada's most familiar, fascinating and hazardous features. From the permanent ice packs of the Arctic to seasonal ice that forms on Canada's inland lakes and along much of our coastline, ice conditions touch Canadian life in many ways. ... Little surprise, then, that Canadians have grown to be the world's leaders in understanding ice dynamics and in putting that knowledge to use for the benefit of our economy and environment. The hub of this expertise, and the best source of ice information in the world, is the Canadian Ice Service of Environment Canada's Atmospheric Environment Service."

Environment Canada - Canadian Ice Service Web Site, <http://www.cis.ec.gc.ca/csu/brochure.html#1>

² The Canadian Supreme Court has the authority to render advisory opinions pursuant to the special jurisdiction provisions of Section 53 of the Supreme Court Act (1985). The Governor in Council, as a representative of the federal government, may submit to the Court important questions of law and fact concerning the interpretation of constitutional acts and the powers of the Canadian and provincial legislatures. In contrast to this practice, the United States Supreme Court declines to issue advisory opinions. For an explanation of the constitutional and policy reasons underlying the U.S. Supreme Court's judicial restraint in not issuing advisory opinions, see Justice Rutledge's opinion in *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549 (1947).

Constitution or international law, the government of Quebec has the legal right to secede from the rest of Canada. The Quebec provincial government refused to participate in the court proceedings on the ground that the issue of secession is a purely political matter for the voters of Quebec to decide and that the Supreme Court lacks jurisdiction to address the sovereignty issue.⁴

In August of 1998, Canada's Supreme Court issued its decision⁵ and concluded that, under the Canadian Constitution, as well as under international law, Quebec does not have the right to secede unilaterally from the rest of Canada. The Court went on, however, to state that if a majority of Quebecers express their desire for independence via a referendum, the federal government and the other 9 provinces would be obliged to negotiate Quebec's separation from Canada. In addition, the Court ruled that the question presented to the voters in an independence referendum must be "free of ambiguity" and reflect the will of a "clear" majority of the people in the province.⁶ The Court declined to set precise standards for determining whether a referendum produced "a clear majority on a clear question in favor of secession". Instead, the Court left that critical issue for resolution by the "political actors," namely the Quebec and federal governments.⁷

³ The three questions presented to the Court were:

1. *"Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?"*

2. *"Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"*

3. *"In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?"*

Reference by the Governor in Council Concerning Certain Questions Relating To The Secession Of Quebec From Canada, as set out in Order in Council P.C. 1996-1497, dated the 30th day of September, 1996.

⁴ Quebec Premier Lucien Bouchard did not mince his words in announcing that his separatist government would ignore the court proceedings:

"Our reaction is quite clear - there is only one tribunal to settle Quebec's political future and that's the Quebec people," *Canadian Press Newswire*, September 26, 1996.

⁵ *Reference re Secession of Quebec*, 2 S.C.R. 217 (1998)

⁶ *Id.* at par. 87

⁷ *Id.* at par.100

In the aftermath of the Supreme Court's decision, the federal government drafted legislation that lays out the requirements for "clarity" in the phrasing of any referendum question, the passage of which referendum by a province's electorate would obligate the Government of Canada to enter into negotiations on the possible secession of that province. The so-called "Clarity Bill"⁸ passed the lower house of the Canadian Parliament in March 2000 and moved to a special Senate committee for consideration. Under the Clarity Bill, the House of Commons reserves to itself the right to review the phrasing of a proposed referendum question to determine if it "would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state."

The bill provides that the requisite "clarity" could not result from a vote that did not directly address the issue of independence but (1) only mandated the provincial government to begin negotiations regarding separation or (2) presented political and economic partnership possibilities potentially short of full separation. Additionally, the legislation does not provide a numerical measure for determining "a clear majority;" instead, it lists a variety of factors, including "the size of the majority of valid votes cast in favor of the secessionist option," the "percentage of eligible voters voting in the referendum," and "any other matters and circumstances it [the House of Commons] deemed relevant." These and other factors would form the basis for the House of Commons's determination whether the referendum produced a clear result on the issue of secession.

The Clarity Bill, if enacted, would place legislative force behind Prime Minister Chretien's insistence that Quebec cannot decide on its own to leave Canada. By conditioning the validity of a Quebec independence vote on national parliamentary approval, the Liberal-led government has granted itself effective veto power over separatist aspirations and has raised the stakes dramatically in the constitutional stand-off over Quebec's future.

Not surprisingly, the Quebec government has responded to the federal government's toughening of its stance with a hardening of its own position.⁹ Quebec Premier Lucien Bouchard and the separatist-dominated Quebec National Assembly have lambasted the Clarity Bill as an unacceptable usurpation of Quebec's right to determine its own future. Bouchard responded to

⁸ Officially designated Bill C-20, The House of Commons of Canada. 2nd Session, 36th Parliament, 48-49 Elizabeth II, 1999-2000.

⁹ The PQ reacted to the federal government's Clarity Bill with the submission of its own clarity bill to the Quebec National Assembly entitled "An Act Respecting The Exercise Of The Fundamental Rights Of The Quebec People And The Quebec State," which rejects federal control of the referendum process and provides that the Quebec people alone has the right to determine the legal status of Quebec. This bill also mandates that an independence referendum be held under Quebec's Referendum Act, with 51 percent considered as a winning majority. The so-called Bill 99 was enacted by Quebec's National Assembly in early December, 2000, shortly after the national parliamentary elections in November of that year, when the Liberal Party increased its majority in the federal House of Commons.

the Clarity Bill by accelerating the drive for a third independence referendum, which he has been planning ever since he won a second term in the November, 1998 provincial elections.¹⁰

Separatists in Quebec have gambled twice before that public opinion favored independence, but they lost both times. The initial defeat came in 1980, four years after the separatist Parti Québécois was first elected to power under Premier René Levesque. The federalist side won 60 percent of the 1980 vote.

The referendum in October, 1995 was much closer, however, with the federalists winning by only 55,000 votes. A majority of French-speaking Quebecers favored separation. It was only the votes of the English-speaking minority, the native tribes in northern Quebec, and the sizable immigrant community in Montreal that tipped the balance in favor of Quebec remaining within Canada.

The vitality of the sovereignty movement has been called into question following the national parliamentary elections in November of 2000. The pro-federalist Liberal Party made major gains in Quebec, capturing 37 seats in the House of Commons and actually winning the popular vote in the province. The Bloc Québécois lost six seats, but retained its status as having the largest party delegation from Quebec, with 38 seats in the House of Commons. These election results might appear to suggest a dimming of prospects for the sovereigntist cause in any future referendum. Upon closer examination, however, such a conclusion may be both superficial and premature.

First, the turnout in Quebec for the federal elections was 63 percent of eligible voters, high by U.S. standards, but markedly lower than the 94 percent voter participation rate in the 1995 referendum. Many of the province's voters are disaffected from national politics and simply chose not to participate. Although a vote for the Bloc Québécois would have expressed pro-sovereignty sentiments, it was not an opportunity to vote directly on the issue of Quebec independence. Consequently, the relatively low voter turnout in the recent national election leaves open the very real possibility that the "missing votes" will be ballots cast for sovereignty when a third referendum is presented to the Quebec people.

Second, the Bloc Québécois found itself in a uniquely awkward position during the election campaign. Because its role in Ottawa is largely that of a single-issue protest party, its candidates can not promise that they will bring federal dollars back to the province or that they can best develop a national legislative agenda. The Bloc Québécois' strongest message is that Quebec should not be part of Canada, so it is hard for the party to convince voters that it can adequately represent their interests in the governance of the country during such time as the province remains part of the Canadian confederation. Many citizens who are committed to Quebec independence submitted a pragmatic vote for the party that had the ability to bring home the federal bacon and address their more immediate, if also more mundane, political concerns.

¹⁰ The Parti Québécois won only 43 percent of the popular vote in the election but managed to maintain its substantial majority in the Quebec National Assembly. The PQ currently holds 76 seats to the Liberal Party's 48 seats. The Bloc Québécois is the federal arm of the PQ and holds 38 seats in the House of Commons. During federal elections, the Bloc Québécois only runs candidates in Quebec.

Finally, the Liberal Party's leader, Prime Minister Jean Chretien, chose the timing for the parliamentary election. Canada's economy is currently enjoying unprecedented strength (Chretien's opponents credit it to the overflow effect from the strong U. S. economy and not to the Prime Minister's leadership). Clearly, buoyant economic conditions (high personal income and low unemployment) favored the incumbent in this last election. In a third referendum on the question of Quebec independence, however, it will be the Parti Québécois, and not the Liberal Party, which chooses when that vote will occur. The Quebec government will choose a time that it considers most propitious, *i.e.*, when pro-sovereignty emotions are high and discontent with the national government is widespread.

Independence remains the primary objective of the Parti Québécois, and because it will determine both the timing of the next vote¹¹ and the phrasing of the next referendum question (ignoring the requirements of the Clarity Bill should it be enacted), control over those factors could give the separatists favorable odds for success the next time a question is put to the voters. Moreover, Quebec's strict language laws have driven over 250,000 English-speaking residents out of the province, mostly to Ontario. Some Canadians refer to this population movement as a form of "gentle ethnic cleansing." It will certainly affect the voting demographics for the next referendum.

The constitutional controversy is not over the possibility of Quebec ultimately becoming a separate nation. The Canadian federal government has acknowledged in the past, and now the Supreme Court concurs, that following a clear and unambiguous majority vote in favor of independence, Quebec can separate from the rest of Canada through a process of negotiation with the federal government and the other provinces over a wide range of difficult and complicated issues. The constitutional crisis surrounds the Quebec government's pronouncements that it has the exclusive right to decide when the province can separate from the rest of Canada. The Parti Québécois believes that the Supreme Court is not a binding authority on the process leading up to secession and that if Quebec voters endorse separation from the rest of Canada, Quebec has the right to declare its independence unilaterally.

After such a declaration, according to the PQ, the Quebec government would negotiate with the Canadian government as two separate and sovereign nations. The PQ proposes that any unresolved issues following such negotiations should be submitted to the International Court of Justice in The Hague for resolution.

The constitutional battle lines are tightly drawn. The Clarity Bill, if enacted, is likely to polarize still further the respective positions of the federal and provincial governments and lessen the prospects of reaching a negotiated solution. By its terms, the Bill bars the national government from entering into any negotiations with a province over a change in its political relationship with the rest of Canada unless the question presented to the voters meets the strict

¹¹ Last autumn, Premier Bouchard proclaimed a new offensive for the secessionist cause, asserting that "political conditions hadn't been as ripe for the mobilization of the sovereignist troops since the 1995 referendum." "Bouchard and the Big, Bad Federal Wolf," *Montreal Gazette*, September 1, 2000.

“clarity” standards established in the legislation. Once the Clarity Bill becomes law, a constitutional impasse, fueled by intransigent political positions, could easily arise.

The following scenario is envisionable. Ignoring the requirements of the Clarity Bill, the Quebec government, seeking to maximize its prospects for success in a referendum, presents a “soft” question on secession to the province’s citizens. A majority of Quebec voters answer the referendum question “yes,” thereby authorizing the provincial government to commence negotiations with the federal government and other provinces over a new form of political and economic association based upon a recognition of Quebec sovereignty.¹²

Confronted with such a referendum question, under the strict provisions of the Clarity Bill, the House of Commons will be compelled to conclude that the question was ambiguous on the issue of secession.¹³ The federal government would then find itself in a straight-jacket, perhaps one of its own making, and be forced to reject negotiations with the Parti Québécois. Under this scenario, faced with an outright rejection of its negotiation entreaty, and holding what it considers to be a mandate from the voters, the Quebec government might proceed to issue a unilateral declaration of independence.

A "declaration of independence"—the very term evokes images of Thomas Jefferson and Benjamin Franklin drafting this country's unilateral assertion of a people’s right to nationhood. Our declaration was rejected by the British government, and it was followed by five years of war.

The circumstances surrounding the American Revolution, however, are not necessarily an appropriate comparison to political events in Canada. The American colonists waged a war against a colonial power which denied its subjects full participation in the government which ruled them. Even the Parti Québécois acknowledges that a colonial situation does not exist in Quebec and that citizens of the province have full and equal rights of representation and

¹² An example of such a “soft” question is the referendum question submitted to Quebec voters in 1995:

Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995, Yes or No?

¹³ Stéphane Dion, President of the Privy Council and Minister of Intergovernmental Affairs, explained the federal government’s rationale for including the negotiations bar in the Clarity Bill:

“A question on a mandate to negotiate that would not solicit a direct expression of the will of the population as to whether the province should cease to be part of Canada, or a question offering other possibilities in addition to secession, including a political or economic arrangement with Canada, could not result in an expression of the will of the population to effect secession. Introducing other elements in the question would make it impossible to know what people really want. In the Court's words, there must be a "clear expression of the desire to pursue secession by the population of a province" (par. 88) to give rise to an obligation to negotiate, and a clear expression that Quebecers "no longer wish to remain in Canada". (par. 92) ”
Press Release by the Minister of Intergovernmental Affairs, December 10, 1999.

participation in the national government.¹⁴ The party simply does not want the province to remain associated with that government any longer.

Perhaps the better comparison is with the declarations of independence (called ordinances of secession) adopted by Southern state legislatures in 1861. Eleven states claimed the unilateral right to end their political association with the United States of America. Those states formed a new country, the Confederate States of America. Their attempt at independence precipitated a military confrontation with the federal government and resulted in the bloodiest war in the history of this continent.

Put simply, sovereign governments do not like portions of their territory declaring themselves independent. King George III did not like it; Abraham Lincoln did not like it; and Canadian Prime Minister Jean Chretien does not like the idea either. That is why, to press his point, he asked the Justices of the Canadian Supreme Court to back him up and declare that Quebec cannot simply walk out of the Canadian confederation. They have done what was asked of them—now what will become of their decision?

Interestingly, neither the Canadian nor the U. S. constitution makes any reference to how a province or state can leave the union. As with Lincoln, Chretien (and Canada's highest court) take the position that the absence of a constitutional provision permitting secession means that a province cannot separate from the country by its own declaration. Based on the Canadian Supreme Court opinion, the federal government would treat any provincial referendum, even one meeting the statutory standards of “clarity,” as merely an advisory vote—a general expression of intent. Secession, on the other hand, requires an amendment to the Canadian Constitution, and that means negotiation and compromise with the other provinces and the national government.

So much for constitutional law. Even before the decision was issued, the Parti Québécois announced that it would not be bound by any court ruling. Indeed, the Quebec government contends that international law, not Canadian domestic law, should determine the issue of which government (Ottawa or Quebec) is legitimate following a unilateral declaration of independence. The doctrine of international law upon which the provincial government relies is that of “effective control.”¹⁵ Simply put, this doctrine provides that whichever government exercises authority over the territory “wins.” So, following a unilateral declaration of independence, such facts as which government administers the civil service, runs the post offices, patrols the

¹⁴ Prime Minister Jean Chretien is a native of Quebec, and the Chief Justice of the Supreme Court at the time of the Reference decision was Antonio Lamer, also a native of Quebec. (He retired in January, 2000.) Section 6 of the Supreme Court Act mandates the selection of at least three justices from the courts of Quebec; currently, five of the nine justices on the Supreme Court are Quebec natives.

¹⁵ The Montevideo Convention of 1933 offers the most widely accepted criteria for definition of statehood, with the principle of effectivity as the third criterion among four (the others being permanent population, clearly defined territory, and capacity to engage in international relations). See “Defining Statehood: The Montevideo Convention And Its Discontents.” 37 Colum. J. Transnat’l L. 403, citing the Montevideo convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19; 28, Am. J. Int’l L. (supp.) 75 (1934).

international borders, collects taxes, controls the police and military will determine whether Quebec succeeds at secession or not.

It was President Lincoln's determination to deny the Confederate government "effective control" over the southern half of the United States that turned a political dispute into a civil war.¹⁶ That decision was preceded by a period of attempted compromise and conciliation. The Confederate Constitution was drafted in February of 1861. Between then and April of 1861, when the battle for Fort Sumter took place in Charleston Harbor, there was a Peace Convention¹⁷ and other efforts to achieve a negotiated resolution. They failed and war followed.

In Canada, perhaps cool heads and reasonable minds would prevail following a Quebec vote for independence, and provincial police and federal troops will not face each other at the doors to government offices. On the other hand, examples such as Kosovo and Ireland prove that passions run high in disputes over national identity, and extremist voices often predominate. It should not be forgotten that a Quebec separatist movement in the 1960s known as the Front de Libération du Québec (FLQ) engaged in bombings, kidnappings and murder. A vote for Quebec independence, followed by a unilateral declaration of independence, followed by the federal government's refusal to acknowledge Quebec's sovereign status, could be a short and fast-burning fuse.

The issue of Quebec independence does not simply pit the preservation of French culture against the political integrity of Canada as a nation. There are potentially volatile issues which must be addressed if the birth of a new nation in North America is to be a peaceable event. For example, what will be the territorial boundaries of this new country? At one time, the Parti Québécois claimed that Quebec's borders should include Labrador¹⁸ and portions of what is now the Northwest Territories. What special rights of transportation will the Maritime Provinces have if they are separated from the rest of Canada by hundreds of miles? There are also more mundane financial issues, such as division of responsibility for a huge national debt and treatment of retired workers with federal pensions.

¹⁶ The Confederacy's attempt to gain British support during the early years of the Civil War was termed the Yancey-Rost-Mann mission and met with only limited success. London recognized the Confederacy's belligerent rights, but the mission failed to obtain English recognition of the Confederate government, to conclude a friendship treaty with England, and to secure a promise of English intervention on the side of the South. England was on the verge of recognizing the Confederacy as an independent state in fall of 1862, but the subsequent decline of the Confederacy's military fortunes led England to remain merely an interested spectator of the American Civil War.

¹⁷ Comprised of delegates from 21 states (though none from seceded states) and held in Washington D.C. during February, 1861, the Peace Convention endorsed six proposed constitutional amendments. The key territorial provision was similar to a compromise proposed by Senator John J. Crittenden of Kentucky to re-enact and extend the Missouri Compromise line west to the Pacific Ocean with slavery allowed south of the line. The proposals were decisively defeated in the Senate in March.

¹⁸ No Quebec government has accepted a 1927 decision of the British Privy Council to award Labrador to Newfoundland.

High on the list of critical issues are the rights of minority groups within Quebec. Most non-French-speaking natives of Quebec oppose secession. The PQ, on the other hand, justifies its commitment to an independent Quebec as a legitimate expression of the right to self-determination by the people of Quebec. It is not freedom from domination by an external colonial power that underpins the PQ cause, rather, it is the claimed right of a people to establish their own state, within the natural boundaries of the geographic area they inhabit, and to organize their society in a manner which reflects the values, culture and aspirations of the majority of citizens which undergirds the sovereignty movement.

The PQ has made broad statements regarding its respect for the civil rights of minority groups, including full rights to citizenship and participation in the political process. For the English-speaking residents of Quebec, concentrated in Montreal and the Eastern Townships, the most contentious issues surround language laws which limit the use of the English language in government, education and commerce. These language laws are intended to protect the integrity of French culture, and they could become even more restrictive in an independent Quebec.

The language laws remain politically popular, both for their practical and symbolic impact. Many residents of the province view the political ascendancy of the French-speaking majority over the English-speaking minority—a process which would reach its ultimate goal through the attainment of sovereignty—as simply a turning-of-the-tables, a correction of a long-endured historical wrong. Most Quebecers consider themselves the province's true native residents, and many view the English-speaking population as cultural trespassers.

The PQ argument in favor of self-determination for the ethnic French population of Quebec runs into competing claims by Quebec's Aboriginal peoples. There is more than a little irony in the fact that the Parti Québécois—a political organization dedicated to the self-determination of Francophone Quebec—has paid so little attention to the Aboriginal people's attempts to assert their own right to self-determination.

The PQ seeks sovereignty within the province's current political borders. The Crees, Inuit and other tribal groups constitute a majority, however, in much of the vast and sparsely populated northern reaches of the province¹⁹. These northern lands have not always been associated with the area now known as Quebec. The northern two-thirds of the province were added through the 1898 and 1912 boundaries extension acts, without the consent of the native people in those areas. The addition of these northern territories was not so much a recognition of any historical land claims the province had to the region, as it was an effort on the part of the national government to integrate these territories into Canada, provide for their administration, and assist in the development of Quebec and its unification with the rest of Canada. Now the PQ wants to include within its plans for nationhood the resource-rich regions which were given to it as part of a nation-building compact with the rest of Canada. This has led one commentator to

¹⁹ The area of settlement in Quebec by persons of European ancestry is limited almost entirely to the St. Lawrence lowlands and parts of the Appalachians and the Laurentians. More than 80 percent of the population of Quebec lives within an area 200 miles long and 60 miles wide

observe: “In the case of Quebec, secessionists seemingly seek to have their cake and eat it too—to secede and take with them land given to Quebec as part of its integration into Canada.”²⁰

Neither the Crees nor the Inuits want to be part of an independent Quebec. In their own pre-1995 referendum votes on the issue, they overwhelmingly rejected secession and expressed their preference for remaining within Canada.²¹ The strong opposition of the province’s Aboriginal peoples challenges the legitimacy of the Quebec government ever claiming a mandate for sovereignty that would include these native peoples and the lands they occupy.²²

In the Reference proceeding before Supreme Court, the Grand Council of the Crees was afforded Intervener status and argued that unilateral secession would constitute a “fundamental breach” of the constitutionally protected treaty rights of the Crees and Inuit under the James Bay and Northern Quebec Agreement, and that the consent of the Aboriginal peoples would be required before any separation of Quebec from the rest of Canada could occur.²³ Such negotiations would undoubtedly include a demand that the Aboriginal regions remain a part of Canada, a land claim that would probably be rejected outright by the Quebec government.

Obviously, the many issues which must be addressed for a peaceable calving of Quebec from the rest of Canada are matters for Canadians alone to resolve, and there is little role for the United States government in that process. Nevertheless, the prospect of a fractured and fractious Canada should be of considerable concern to the United States.²⁴ The risks to North American stability, while remote, are, nonetheless, real.

There is a lesson for those of us in the United States to reflect upon as we watch, from a close distance, the constitutional struggle of our neighbors to the north. Canada does not have a strong constitutional tradition. Adopted in 1867, the Canadian Constitution, the British North America Act, was, in many respects, a British export.

The Canadian Constitution was not "patriated" from the Parliament in London until 1982 and, at that time, Quebec objected to the terms of patriation. The Canadian Constitution has

²⁰ S. Ratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States* (1996) 90 *American J. Int'l L.* 590 at 607.

²¹ Ninety-six percent of the Cree voted to remain part of Canada in the event of Quebec secession, as did 95 percent of their Inuit counterparts.

²² A.C. Cairns, *Why Is It So Difficult To Talk To Each Other?*, (1997) 42 *McGill L.J.* 63

²³ *Factum of the Intervener Grand Council of the Crees Reply To Factum of Amicus Curiae*, January 19, 1998.

²⁴ In addition to sharing a 5,500 mile border, Canada is, by far, the United States’ largest international trading partner. According to *Statistics Canada*, in 1999, Canadian exports to the United States were valued at over 200 billion U.S. dollars, and Canada imported \$145 billion worth of products from the United States.

never had a "made in Canada for all Canadians" feel to it. Indeed, the preamble states that Canada will be governed under a constitution "similar in principle to that of the United Kingdom." In contrast, the United States Constitution has always displayed a "made in America" stamp.

Although not all-inclusive at its origin, the U.S. Constitution has become a big tent under which most Americans feel at home. There may be endless debates over the proper interpretation of the U.S. Constitution, but the notion, at this point in our nation's history, of a state repudiating the Constitution and refusing to participate in a judicial battle over its application seems foreign to our system of representative government and to the rule of law. The U. S. Constitution is the political glue that holds together a diverse population. This has never been the case with the Canadian Constitution, and the lack of constitutional glue may explain, in part, why Canada now finds itself with a political center which cannot hold.

**George Isaacson is a member of the Class of 1970 and has been an Adjunct Lecturer In Law at Bowdoin College since 1974. He practices law in Lewiston, Maine.*