A. Gagnon, “Quebec-Canada: Constitutional Developments, 1960-92,” in A. Gagnon, ed., *Quebec: State and Society*, 2nd ed. (Toronto, 1993)

**Overview**

This chapter discusses earlier negotiations between Quebec and the other constitutional partners, beginning with the Quiet Revolution. The chapter also evaluates the potential for success of Quebec’s pursuit of constitutional objectives using domestic and external factors.

**Background**

* Canada experienced significant transformations over last decade (1982-1992) starting in 1981 with the patriation of the Constitution and the federal government’s decision to append to it a Charter of Rights and Freedoms
* Insertion of Charter dealt a heavy blow to parliamentary democracy and to executive federalism, as it gave added powers to the judiciary
* Numerous negotiations took place between 1960 and the late 1970s.
* In 1977, an important federal initiative was the Task Force on Cdn Unity – known as the Pepin-Robarts Task Force, it was based on three elements: (1) the existence of different regions; (2) the predominance of two cultures; and (3) the quality of two orders of govt
  + The main thrust of the proposed changes was the institutionalization of *asymmetrical federalism* – suggesting that all provinces are not equal and the same. While avoiding a *de jure* special status for Quebec, Quebec’s special relationship to the rest of Canada was said to be *de facto*, recognized in arrangements that had been offered to all provinces but in which Quebec had been the only participant
* May 1979 – Canada elected its first Conservative govt since 1963, with PM Joe Clark more disposed towards decentralization than Trudeau was. Cards were quickly reshuffled and Trudeau was again elected in 1980.
* Trudeau moved forward to Meech – which failed in June 1990. The govt of Quebec, with no mandate to negotiate further on its reinsertion into the Cdn federation, elaborated new policy report – the Allaire Report
  + Allaire Report – entitled *A Quebec Free to Choose* – proposed to diminish federal govt’s scope and transfer significant powers to the provinces. Federal govt would be left just with *full* jurisdiction over defence, equalization payments, monetary policy and customs, and debt management
* In July 1992, the federal govt and the 9 Anglophone provinces reached consensus that asymmetrical federalism not the order of the day – this started off Charlottetown negotiations with Quebec, which was once again soundly defeated (not just by Quebec, but also Manitoba, Saskatchewan, Alberta, BC, Nova Scotia, and Aboriginal communities)
* Cdn Federation as a viable option? Nothing points to an easy resolution of current (and possibly fatal) constitutional crisis. Some domestic and external factors to consider:
  + Charter of Rights and Freedoms – Gagnon argues that the insertion of the Charter (a nonfederal document) into the Constitution Act of 1982, along with the emerging view that “a province is a province is a province” (Mallory, 1990) changed the political dynamic.
    - C. Taylor supports this view – referring to:  
      (1) the conflict between the Charter of Rights and the recognition of Quebec as a distinct society, which raises the question of the procedural approach, implying that the Charter might well be differently interpreted in specific cases, and  
      (2) the irreconcilable issue of equality between the provinces in contrast to the special status demanded by Quebec
    - These elements make it impossible to solve the present constitutional crisis in the present constitutional framework
    - Additionally, in light of recent constitutional negotiations, an emerging minoritarian tradition concerned with aboriginals, multicultural communities, women’s rights, and other interests, displacing the notion of founding people as the principal pillar of Cdn society has developed
  + Economic considerations – Quebec now on more equal ground
  + Constitutional engineering and politics

**Conclusions**

* The future of Canada depends on a variety of factors, among which are: the imagination of its leaders, the will to accept Quebec’s special place in Canada, and the capacity of these leaders to find devices that subsume the application of the Charter under a territorial formula to account for Quebec’s special and unique needs in the Cdn federation. Hwr, this will be difficult to achieve due to:
  + Rapid demise of first ministers’ conferences (and executive federalism) which are perceived as too elitist
  + Profound distrust of traditional forms of representation (i.e. major political parties) complicated by the emergence of regional blocs such as the Reform Party and BQ
  + The rapidly acquired faith in the Charter in English-speaking Canada, complicated by Quebec’s cultural insecurity
  + The equality of provinces precept that gained prominence with growing popularity of province-building in the 1970s
* All these factors coalesce to make the recognition of Quebec as a distinct society difficult
* Meanwhile:
  + Quebec will never agree to define itself as a *province comme les autres*
  + Quebec cannot accept that the Charter undermines the supremacy of Quebec’s National Assembly
  + Quebec cannot accept having English-speaking Cdns decide the fate of the most important and viable French-speaking community in North America
  + Situation is further compounded by fact that Quebec’s constitutional right of veto was denied by its Cdn partners when the time came to patriate the Constitution in 1981 and that so far no corrective measures have been implemented
* In the end, the only available option for the ROC may be to define its common values around the Charter, and let Quebec go its own way