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THE PLACE OF QUEBEC IN NORTH AMERICA

The Hon. Pierre-Marc Johnson[†]

Thank you for this introduction Sir. Thank you also for covering the basic historical part. Therefore, I will not insist too much on that. I will talk though about something that is surprising for many people, which is this obstinate survival of a French speaking society on this continent and its political consequences.

Looking at it means looking at a persistent voicing of demands for political recognition and jurisdictional powers. It is also looking at one of two obsessions of Canadian politics, the other one being “not being American”.

Let me start by a quote from Jacques Godbout, an exceptional novelist and a national Film Board cinematographer, who has made 30 films including some about French Quebec and the U.S.¹ Three years ago, he wrote in the New York Times: “What gave Quebec culture its strength 20 years ago resulted from a profound questioning of traditional values, and the identification of the larger artistic unity with a national project. Today in all the arts under the influence of globalization, Québec artists have become autonomous individuals. The project for political sovereignty, it seems, has succeeded only on a personal level. Our national culture aspires to be international. And Quebec, which is still only a symbolic country, regularly show-

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¹ Professional resume available at: <http://www.imdb.com/name/nm0323744> (last visited Oct. 24, 2004).

cases its arts abroad.”² He goes on to say that, “Quebec culture is influenced by intellectual life in Paris, because we share the same language.”³ Interesting, he does not say the same culture. “And by the creative energy of New York, because we’re almost neighbors. This is felt in the rhythm of our television shows, in our comedians, in the ambitions to make of Montreal a world center for contemporary dance.”⁴

“If we issue from both Hollywood and Saint Germain des Prés,” he goes on to say, “if our heads are often in Europe, but our hearts in the Americas, this is not because of any split personality. It is simply our way of existing. Relations between Quebecers and Americans are friendly, ancient and deep.”⁵ For many Americans, not of the border area of course, Quebecers are French people living in North America. They see them as a Latin people, who like to argue, wear berets and love smelly cheese. We are often viewed as unrepentant leftists and liberals who have a taste for state interventionism and collective rights.

Now, for many Frenchmen, not those who have traveled this continent of course, Quebecers are seen as North Americans who speak French with a funny accent. To them, Quebecers belong to a continent of great spaces, where people inhabit in the wilderness with the caribous. We drive big American cars, eat at McDonald’s, and listen to Elvis Presley and country music. They think we believe strongly in the American type free markets, economic freedom and individual rights.

I guess most of that is true, except the beret, and the caribous. First, our identity, our culture, our economy, our social life is deeply rooted on this continent. Paradoxically, Québec’s history has far more to do with that of the United States than with that of France. Indeed, Québec hardly had any contacts with France for almost 200 years after the British conquest of 1763.

French Canadians, one could say, secured their future through the Québec Act thanks to the American Revolution.⁶ The British anticipated the French population of the new colony might be tempted to go the way of the American Revolution that was just around the corner. A huge majority of the new Colony was French speaking and of no particular allegiance to the Crown of England. The British, in order to ensure stability in the colony, entered into a generous pact with the majority with the help of the Catholic Church.

This pact recognized the place and survival of the French language, assured the perennial use of French civil law (rather than common law) to gov-

² Jacques Godbout, *Theater: A Symbolic Nation Aspires to the International*, NEW YORK TIMES, Sept. 16, 2001.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ The Quebec Act, 14 Geo. 3, ch. 83 (1774) (Eng.).

ern relations between individuals with few exceptions. Finally, it granted religious protections to Catholicism. From then on, the clergy would have control over hospitals and schools in a context where the Catholic Church would play a dominant social role until the second half of the 20th century.⁷ These are fundamentals to the understanding of how this small population of peasants survived and eventually thrived to become the Québec of today with 7.5 million people. The French speaking population of Québec today accounts for more than 80% of the population of Québec and constitutes more than 80% of the totality of French speakers of Canada.⁸

Historical anecdotes illustrate the close relationship between Québec and the U.S. In their great northwest expedition, Lewis and Clark had a guide named Toussaint Charbonneau, a Montrealer,⁹ whose wife, believed by many to be the spiritual guide of that expedition,¹⁰ was a Native American from the Shoshones; she appears on the year 2000 silver dollar of the United States with her child Jean-Baptiste Charbonneau.¹¹

René Lévesque, the charismatic figure of contemporary Québec nationalism, was a war correspondent in the U.S. Army during World War II.¹² Moreover, hundreds of thousands of Quebeckers vacation in Maine or own condominiums and other properties in Florida. In addition, there is huge trans-border regionalism between Québec and Maine, Vermont, New Hampshire and Northern New York.

To understand Québec demands addressing Nationalism as a concept and a reality.

THE IMPORTANCE OF NATIONALISM

Nationalism is often associated with emotions, with disruptive activities, with anxious collective behaviors, but the mind can apprehend the phenomenon with serenity.

Nationalism is a sociological, cultural, and political reality found in the words of poems and songs. It is deciphered in behaviors, networking activities, in the economic and social realms. Nationalism is about the collective

⁷ Grant H. Carlton, *When Reality Sets in: Why Quebec Could Not Exist As An Independent Nation*, 7 J. INT'L L. & PRAC. 465, 467 (1998).

⁸ Frank M. Lowrey, IV, *Through the Looking Glass: Linguistic Separatism and National Unity*, 41 EMORY L.J. 223, 232 (1992).

⁹ Allison M. Dussias, *Science, Sovereignty, and the Sacred Text: Paleontological Resources and Native American Rights*, 55 MD. L. REV. 84, 111 fn192 (1996).

¹⁰ Richard R. Holley III, *Dueling Dollars: The Story of Sacagawea's Journey*, 5 N.C. BANKING INST. 579 (2001).

¹¹ *Id.*

¹² Robert McKenzie, *U.S. Help on Quebec Will Have a Price Tag*, TORONTO STAR, April 17, 1990, at A17.

self; it is made of expressions of belonging to a given community. It takes root in various factors such as territory, culture, ethnicity, a community of language, sometimes of religion, and the sharing of historical experiences.

It resorts to the use of symbolic objects, such as flags. It calls on individuals to demonstrate solidarity towards collective goals, to share common values, or to demonstrate responsibility towards the higher interests of the community. Mostly, nationalism is about the political discourse, political rhetoric, and political actions.

I am sure you have recognized in this what some would call “patriotism”. I am sure large parts of the population of Québec, as well as most parts of Canada, relate to such a definition of nationalism when it comes to Québec nationalism and Canadian nationalism.

Often, nationalists’ rhetoric and projects are elaborated in response to individual or systemic situations, or perceived situations, of discrimination that carry frustration, alienation, a sense of threat or injustice that may generate outrage and even desperation.

More often than not, nationalism also finds its way in chauvinistic traits; benign manifestations of exaggerated self-praise in a community. Examples abound, mostly in sports arenas, in international competitions; in embellished presentations of economic, social, cultural or scientific facts and feats; or, simply, in the boasting about a landmark or statistic that is presented totally out of context.

In well-established democracies, I believe that nationalism can be a force that allows the widespread sharing of a perceived future, and the mobilization of a community towards the betterment of life for all. That is what happened in Canada, and that is what happened in Québec in the last two generations.

Like all political phenomena, it needs alterity. Nationalism is better expressed if there is an “other”. Just as Canadian nationalism sounds clearer when it defines itself as “not being American”, Québec nationalism is somewhat more resonant when it is antagonistic to Federal Canada.

Finally, the clearest political expression of nationalism is the community’s demands for more power or its efforts towards “liberation” or “independence” from whatever forces are “external” to that community. This is particularly true of minorities (French Canadians in Canada and Quebecers in Canada have viewed themselves as a minority in Canada and North America).

I contend that French Canadian history is that of a series of nationalisms. There was, for more than 200 years, a French Canadian nationalism. It was religiously, ethnically and linguistically, based, and territorially fundamentally Canadian. It gave way to a strong political quest for equality. French Canada since the Second World War has demanded with some consistency

equality and protection for the French language and for French speaking minorities all across Canada.

In parallel, particularly after the Second World War, emerged a territorially defined Québec civic nationalism. This nationalism is of course driven by the sense of identity of the French-speaking majority of Québec, but it is also attempting to be inclusive of the ethno-cultural diversity of Québec. It is rooted in the conviction that survival and progress for French speakers in Canada must rely on strong democratic institutions in Québec. The main vehicle of this view has been the sovereigntist movement. Yet it would be a mistake to consider all Québec nationalism as separatism, since all political parties in Québec (including anti-separatist forces) in the last half century have formulated constitutional demands for more jurisdictional powers to the Québec legislature. In other words, nationalism is not necessarily separatism.

I was struck recently to see that the Premier of British Columbia met alone (i.e. in the absence of Federal officials, the U.S. Commerce Department's Undersecretary for International Trade).¹³ Not so long ago a similar situation in Québec would have given way to a more than minor federal provincial quarrel possibly with passionate overtones; simple acts of activist political regionalism in the rest of Canada, when it comes to Québec are viewed as consistent with a separatist pattern.

TWO COHORTS FROM QUEBEC

Let me look here with you at some recent history, that of the 1960s, in fact the years that span from the late 1950s and the mid-1970s. It was a period of extraordinary political density in Québec and Canada. This is, I remind you, the decolonization era of the developing world, the expansion of the welfare state in most western countries, and the social and cultural liberation movement of the 1960s and 1970s activated by the baby boom generation.

Two groups of politicians headed each their way from French speaking Québec. These two cohorts would lay the basis of the intersection of two different conceptions of Canada and of the place that Québec should play within Canada or within the community of nations. The two groups shared aspirations for the emancipation of French Canadians and the establishment of a just society. However, they had radically diverging ideological positions as to Québec nationalism and its specific role within or without the Canadian Federal system. They would soon confront each other and give rise to per-

¹³ John Greenwood, *B.C. Tries to Cut own Deal with U.S. Over Softwood: 'Preference Still for Country-Wide Solution'*, FIN. POST, April 3, 2004, at FP6.

manent tensions that have constituted essentially the central dynamics of Québec, and Canadian politics for more than two generations.

The French Canadian Federalists

The first group of intellectuals, free thinkers, professionals, stepped into the Federal political arena with Pierre Trudeau leading them in the 1960s. They assumed control of the Liberal party of Canada on the Federal scene; this was the so-called “French power.” The second group of individuals of the same breed became definers of the Québec Provincial Government’s policies as they dominated the Québec Liberal party and the Parti Québécois emerging from the Liberal Party of Québec in the late 1960s. They would be the fathers, sons, and daughters of what we called the “Quiet Revolution”.

On the Federal scene, the first group’s territory was Canada, obviously. Their political vision adhered to the concept of French Canada as collectively, historically rooted, all across the territory of Canada. They were convinced that progress for French Canadians demanded their strong participation in Federal institutions and tended to – at best – consider the Québec government as one equal of ten provinces, and at worst they would downgrade the role of the Québec government.

They had a three-part agenda. First, one of social change connected actually with the Great Society of Lyndon B. Johnson in the United States and the British labor party reformist agenda. This progressive approach became mainstream in Canadian politics with strong legislative activity in the Federal Parliament, and massive spending to fund provincially administered social programs.

The second part of their agenda was the construction of a Canadian foreign policy that would be distinct from that of the United States.

The third was the quest to insure legal equality to French Canadians from coast to coast in Canada, and ridding Canada of as much as possible of vestiges of colonial British symbols remaining in Canadian institutions.

They largely succeeded, making Canada an officially bilingual country, a prosperous place, in a social democratic policy environment that distanced the country from its southern neighbor.

Under the Liberal party’s reign in the 1960s and 1970s, the adoption of energy, agricultural, environmental and other economic policies was accompanied by what was called by many provinces a “centralist” approach. (i.e., an approach by the Federal government, which gave a very restrictive interpretation to provincial rights and jurisdictions). It was a time of massive use by the federal government of its spending power to “invade” provincial jurisdictions in education, health and social policy and services.

The concept of a strong Federal Government was a rallying cry of these efforts. Nation building for Canada was on the order of the day and was sys-

tematically accompanied by challenges to provincial politicians, not only those of Québec, but those of western Canada also.

On the foreign policy front, the landmarks were the early 1960s recognition of the People's Republic of China, the maintenance of diplomatic relations with Cuba under Castro, and a strong and systematic approach to multilateralism and its institutions in the U.N. system, the Commonwealth, the Francophonie; there were also, squabbling with the U.S. over sovereignty over the Arctic and the cruise missile testing in Canada.

The equity agenda for French Canadians took the form of the Official Languages Act recognizing the equal status of English and French in Federal institutions.¹⁴ A series of related policy efforts aimed at providing Federal services to the population in both languages were adopted. In spite of the opposition it met in many parts of the country, the Federal Liberal Party of Canada made its pride of these policies, as it also gave Canada its flag.

The Québec Nationalists

On the Québec “national” scene, something else was happening in parallel. The second group had conquered the Québec legislature. University professors, intellectuals, broadcasters, social activists, young professionals, union cadres and progressive business people formed the core of what was the Québec Liberal Party with no real link with the Federal Liberal Party. Their territory was Québec and its legislature. They postulated that the progress for French speaking people demanded a strong Québec State. They drew in a traditional nationalist and conservative past, but gave it a social democratic spin modeled on Scandinavian style approaches to social policies.

With slogans such as “Maîtres chez nous!” or “Masters in our own house!”¹⁵, under the Québec Liberal Party, which was not the separatist party, the concept of “Quebecker” was being forged, gradually replacing that of “French Canadian”. We will seldom hear people who are under 50 in Québec refer to themselves as French Canadians. They will refer to themselves as French speaking Quebeckers or Québécois.

A SOCIETY TRANSFORMED

All of that transformed society and gave way to dramatic changes in the social fabric of Québec. I will give you just a few numbers. In 1950, two

¹⁴ Official Language Act, R.S.C. ch. 54 (1969) (Can.).

¹⁵ Jean-Francois Gaudreault-Desbiens, *The Quebec Secession Reference and the Journal Arbitration of Conflicting Narratives About Law, Democracy, and Identity*, 23 VT. L. REV. 793, 813 (1999).

thirds of the population of Quebec was urbanized.¹⁶ In 2000, four-fifths was urbanized.¹⁷ Life expectancy was somewhat less than 60 years, and the birth rate in Quebec was one of the highest in the western world in 1950.¹⁸ Life expectancy is now 76 years for men,¹⁹ 82 years for women,²⁰ and the birth rate is the lowest in OECD countries.²¹

In education, more than half of Québec's population did not reach the tenth grade in 1950, whereas, now 80 percent of Quebecers aged fifteen to nineteen attend school,²² and more than 135,000 of them attend universities.²³ In absolute numbers, this is nine times more than in 1950, when the population doubled during that time.²⁴

In 1950, 90 percent of the population attended services in churches at least twice a month.²⁵ Today, less than 25 percent of the population attends one service a month.²⁶ In 1950, French speaking Quebecers were largely absent from managerial positions. They had less than 30 percent of managerial level jobs.²⁷ In 2000, they had 60 percent of managerial level jobs in Québec.²⁸ The church does not run the schools and the health system anymore. Both are essentially public.

Extraordinarily, most of these changes happened in a matter of somewhat less than two generations.

¹⁶ Rétrospective du 20^è siècle. Extrait de La situation démographique au Qc- 1999. Institut de la Statistique (Québec)

¹⁷ Rétrospective du 20^è siècle. Extrait de La situation démographique au Qc- 1999. Institut de la Statistique (Québec)

¹⁸ John A. Dickinson & B. Young, *Brève histoire socio-économique du Québec. Ch.IX : Le Québec contemporain, depuis 1960*. Québec, Septentrion, 2^e édition, 1995, pg.385.

¹⁹ Institut de la statistique Québec available at: <http://www.stat.gouv.qc.ca> (last visited Oct. 4, 2004).

²⁰ *Id.*

²¹ See JOELLE E. SLEEBOS, LOW FERTILITY RATES IN OECD COUNTRIES : FACTS AND POLICY RESPONSES, available at: <http://www.oecd.org/dataoecd/13/28/16587241.pdf> (last visited Nov. 1, 2004), Leah Schnurr, *Canada's Birthrate Hits Record Low*, THE GAZETTE, (Can.), April 20, 2004, available at: http://www.religiousconsultation.org/News_tracker/canada_birthrate_hits_record_low.htm (last visited Nov. 1, 2004).

²² Institut de la statistique Québec, *supra* n.20.

²³ *Id.*

²⁴ *Id.*

²⁵ JOHN A. DICKINSON, AND BRIAN J. YOUNG, *BRÈVE HISTOIRE SOCIO-ÉCONOMIQUE DU QUÉBEC. CH.IX : LE QUÉBEC CONTEMPORAIN, depuis 1960*. Québec, Septentrion, 2^e édition, 1995, 385 p.

²⁶ Claire Andrée Cauchy, 2003. *Religion: le paradoxe québécois*. Le Devoir, mercredi 14 mai 2003., p.A1.

²⁷ Côté, Roch. Québec 2000. Montréal, Fides.

²⁸ F.Vaillancourt & M. Leblanc. La propriété de l'économie du Québec en 1991 selon le groupe d'appartenance linguistique.

CONSTITUTIONAL ISSUES PAST, PRESENT AND FUTURE

The “non-event” of that period, though, relates to the political status of Québec. The quest for recognition, the search for more constitutional power for the legislature of Québec was not met, sometimes because Québec could not pick up the ball (1974 Victoria charter constitutional charter), or because the federal government became intransigent as in the 1982 repatriation act.

Over the last 40 years, there have been a series of unresolved attempts at settling the so-called Québec question from the Laurendeau-Dunton Commission on bilingualism and biculturalism (1963-1968), the Fulton-Favreau Patriation formula in 1964,²⁹ the Confederation of Tomorrow Conference of 1966 and 1967,³⁰ the Victoria Charter of the 1970s,³¹ and then the First Referendum in 1980.³²

In 1982, the Federal Government repatriated the Constitution from the United Kingdom,³³ included in it a Charter of Rights,³⁴ and an extremely rigid amendment formula.³⁵ Québec did not consent to these constitutional changes and an important political crisis ensued. Since then, the federal government, under a Conservative Party regime, twice attempted to bring Québec's adherence to the 1982 Constitution. The Meech Lake Accord effort³⁶ and the Charlottetown effort³⁷ were both unsuccessful. In the first case an insufficient number of provinces (it took only two to block the process) voted in favor of the Constitutional reform proposed by the Mulroney Government. The reform in fact was quite menial and inconsequential in comparison to the historical constitutional “demands” of Québec. Yet the effort to recognize it as a “distinct society” in the constitutional text went to the heart of the popular feeling of the Québec electorate. The rest of the country rejected even

²⁹ Fulton-Favreau Formula, *reprinted in* 12 MCGILL L.J. 579 (1966 - 67) (The October 30, 1964 Draft Amendment formally named An Act to Provide for the Amendment in Canada of the Constitution of Canada).

³⁰ See JAMES R. HURLEY, *AMENDING CANADA'S CONSTITUTION: HISTORY, PROCESSES, PROBLEMS, AND PROSPECTS* (Canada Communications Group, 1996).

³¹ See H.F. DAVIS, *THE CONSTITUTIONAL REVIEW 1968-1971: SECRETARY'S REPORT* (Canadian Intergovernmental Conference Secretariat, 1974).

³² Catherine Valcke, *Quebec Civil Law and Canadian Federalism*, 21 YALE J. INT'L L. 67, n11, (1996).

³³ Constitution Act of 1982, R.S.C. 1985 (Can.)

³⁴ Can. Const. (Constitution Act, 1982) Pt. I (Canadian Charter of Rights and Freedoms). Schedule B, Part I, which is comprised of sections 1 through 34, is commonly referred to as the Canadian Charter of Rights and Freedoms.

³⁵ *Id.*

³⁶ PETER W. HOGG, *MEECH LAKE CONSTITUTIONAL ACCORD ANNOTATED* (Carswell Legal Publications, 1988).

³⁷ See Consensus Report on the Constitution and the Draft Legal Text, *reprinted in* THE CHARLOTTETOWN ACCORD, THE REFERENDUM AND THE FUTURE OF CANADA, 279-361 (Kenneth McRoberts & Patrick Monahan eds., 1993).

that.³⁸ As to the second attempt (the so-called Charlottetown accord - a dilution of Meech), it met with negative referenda results across the country including in Québec.³⁹

So where do we go from here? Well, we start from a situation of constitutional fatigue for both Quebeckers and English Canada. People do not really want to address these issues anymore for the time being. Neither in Québec nor in the rest of the country is there an appetite for Constitutional reform.

To get a sense of where things are going, we need to address the changes that have taken place in Québec society for two generations.

Firstly is the importance for the elites to recognize that there are at least two nationalisms evolving in French Canadian history. One finds its resolve in the Canadian system, and adheres to the notion that the struggle for recognition of linguistic rights has been won for the essential part, but at the price of relinquishing a profound change in the status of Québec within Canada.

The other is centered on Québec rather than Canada. It will find its resolve and satisfaction either in a clear constitutional recognition of its specificity and difference or in attaining the status of a new nation-state.

The second series of facts to be considered are those related to the redress of individual and collective discrimination with not only linguistic overtones but also the overlapping socio-economic status of French speakers in Québec. It is not true anymore that French speaking Quebeckers, or French speaking Canadians for that matter, are, as they were until the 1960s, systematically disadvantaged compared to others.

The third element is the changes occurring in the perception of the role of Government, whether it is the Federal Government or the Québec Government. We live in a capitalist system. The market economy is thriving in Québec as elsewhere. We now have a strong middle class, and Québec has gone through its Protestant revolution, meaning that it is lawful and desirable to make money. The role of Government, such a powerful source of social and economic change in the 1960s and 1970s, is now strongly put into question.

Finally, Québec will go on being what it is, economically, socially, culturally, whatever the constitutional context is. Economically, it has a GDP of \$185 million U.S.,⁴⁰ and can count on its natural resources as a solid base for wealth generation.

Québec exports energy. Twenty-five percent of Hydro-Québec's revenues come from the sale of hydro-electricity to the United States. Our aero-

³⁸ Frank M. Lowrey, IV, *Through the Looking Glass: Linguistic Separatism and National Unity*, 41 EMORY L.J. 223, 247-251 (1992).

³⁹ Johan D. Van Der Vyver, *Self-Determination of the Peoples of Quebec Under International Law*, 10 J. TRANSNAT'L L. & POL'Y 1, 6 (2000).

⁴⁰ See http://www.iedm.org/etudes/Tableauxetude7_en.html (last visited Sept. 27, 2004).

space industry is just next to that of Seattle. The importance of the new information technology sector in Montreal is just behind that of San Francisco, Boston and Dallas. NAFTA makes sense for Québec, a lot of sense, as it does for the U.S. Our economy is increasingly integrated to that of the rest of the continent, with some eighty percent of our exports going to the USA.

Culturally, eighty percent of the movie market in Québec is made up of Hollywood movies, most of them translated in French. Even though our TV has a high Québec original content, we watch the Sopranos speaking French. We will go on exporting content, and win the Cesar in France, and sometimes if we are lucky, an Oscar in Hollywood in the foreign film category.

You will see and hear from all Premiers of Québec and all political parties a consistent approach to consolidating and developing our international presence. In Europe, particularly with France with whom we have had solid relations for the past 45 years, and with the United States, as Québec has offices in many major American cities. The executive branch of government will continue to participate in the Northeastern Governor's Conference and adopt programs linking academics, security organizations and cultural institutions.

As to scenarios for the future, I will address them in the question period since my time is over, Mr. Chairman.

