

## CHAPTER 3

# Il suffisait de presque rien: Promises and Pitfalls of Open Federalism

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In his December 2005 speech in Quebec City and in his January 2006 letter to the Chair of the Council of the Federation, Stephen Harper outlined his vision of “a new style of open federalism” for Canada. This vision, he acknowledged, was not a radical departure from Canadian tradition, but it offered a break with a “domineering and paternalistic federalism” and with “one-off deals with individual provinces.”<sup>1</sup> Harper proposed to respect the autonomy of the provinces and the division of powers established in the constitution, to work collaboratively with provincial and territorial governments, and to acknowledge the special institutional and cultural responsibilities of the Quebec government. Concretely, these principles entailed circumscribing the use of the federal “spending power,” initiating a collaborative process to eliminate the fiscal imbalance between Ottawa and the provinces, and creating new avenues for Quebec participation in international affairs.

As an electoral discourse, Harper’s approach worked. In Quebec, in particular, the open federalism speech triggered an ascendancy that brought the Conservative Party from about 10 percent of popular support in late December to 24 percent a month later, on the day of the election. Many commentators wondered at the impact of a speech that did not promise radical change and included few specific commitments. “Il suffisait de presque rien” wrote *La Presse* columnist Vincent Marissal, paraphrasing a 1968 love song by Serge Reggiani.<sup>2</sup> So little was needed. The newspaper’s chief editorialist also noted that the Quebec speech promised little that was new or path breaking.<sup>3</sup> The absence of a strong reaction in the rest of Canada appeared to confirm,

indirectly, the merit of Harper's prudent opening. Health care, corruption, taxes, and a general desire for change prevailed in public opinion outside Quebec, and open federalism did not seem to matter, even though most Canadians saw national unity as a non-issue and opposed giving the Quebec government a greater role in international affairs.<sup>4</sup>

What happened then? One plausible interpretation is that, in style as well as in content, the Quebec speech responded to a deeply ingrained desire for symbolic recognition among francophone Quebecers.<sup>5</sup> Focus groups also evoked a desire for respect in the wake of the sponsorship scandal, and an appreciation for Stephen Harper's efforts to address in Quebec and in French the concerns of Quebecers.<sup>6</sup> These interpretations are consistent with what we know of Quebec public opinion. They may not be sufficient, however, to understand fully what was at stake with open federalism. The inherent appeal of recognition, reconciliation, and respect explains why Quebecers responded positively to Harper's new vision, but it offers few operational guidelines regarding the course of action that could be or should be pursued. The past 20 years have taught us how problematic, indeed perilous, the politics of recognition and reconciliation can be. Even limited symbolic gestures, like the 1997 Calgary Declaration, or relatively inane administrative agreements, such as the 1999 Social Union Framework Agreement (SUFA), stumbled upon this obstacle. For every promise held by open federalism, there are also significant pitfalls, both symbolic and institutional. Careful consideration is therefore warranted.

The positive reception of open federalism by francophone Quebecers makes sense in a broad perspective, but it leaves many questions open. Public opinion research teaches us that collectively citizens hold relatively coherent and stable views, anchored in shared values and attitudes, and there is no doubt that Quebecers have sought for a long time some form of recognition of their society within the Canadian constitutional order.<sup>7</sup> But why did this particular speech in Quebec City, and not earlier or competing ones, work? What does this success suggest about the policies that should be implemented? And how much can the Conservatives accomplish in the short life span of a minority government?

This paper briefly addresses these three questions: Why exactly did open federalism appeal to Quebec voters? What policies does its implementation require? And how can such policies be initiated rapidly? I do not pretend to know the answer for each question, but I think some understanding can be gained from taking the idea of open federalism seriously, and probing its meaning in light of the country's political history. My general hypothesis is that the Quebec speech worked because it corresponded to an old and deeply anchored vision of the place of Quebec within the Canadian federation, a vision that still informs the attitudes of francophone Quebecers, even though they may have forgotten its origins or its exact formulation. If this hypothesis is true, it has implications for public policy. Symbolic gestures may have their importance, but they will not be sufficient, especially in the short time frame available

to the new government. At the same time, public expectations remain low. What matters most is consistency, in light of the objectives stated or implied by the prime minister's electoral statements on federalism.

### ***Why Did Open Federalism Work?***

Compared to most documents or speeches that were produced to discuss federalism in Canada, the speech and letter that outlined Stephen Harper's vision of the country were remarkably short and simple. These presentations put forward some basic principles and derived from them a few policy implications. In the Quebec speech, Harper started by acknowledging the place of Quebec "at the heart of Canada" and of the French language as "an undeniable component of the identity of all Canadians." He then denounced the corruption associated with the Liberal governments of Jean Chrétien and Paul Martin and evoked the memory of René Lévesque in support of his plans to improve accountability and trust in federal politics. The political centrality of Quebec, the old province and the new society, was thus recognized. Then, Stephen Harper presented open federalism as such, stressing the need to preserve the autonomy of the provinces, to accommodate the special cultural and institutional responsibilities of the Quebec government, and to respect the division of powers established in the constitution. To each of these principles corresponded a policy objective. Preserving the autonomy of the provinces required eliminating the fiscal imbalance in the federation, accommodating Quebec implied allowing its government to play a more significant role in international cultural affairs, and respecting the division of powers meant limiting the federal use of the "spending power."

In his letter to the Chair of the Council of the Federation, Harper followed the same approach but insisted more on the importance of working "closely and collaboratively with the provinces and the Council of the Federation to develop Canada's economic and social union." In addition to the policies presented in Quebec, he mentioned a new Canada Education and Training Transfer, a Highways and Border Infrastructure Fund, and a revised equalization formula that would "exclude non-renewable resource revenues for all provinces." The letter's emphasis on the economic and social union and its reference to intergovernmental collaboration counterbalanced, without contradicting it, the stress placed on autonomy and the division of powers in the Quebec speech. These intergovernmental considerations did not have as much political impact in Canada because they did not concern identity and long-held historical views, but in due course they will also matter.

In Quebec, citizens and observers alike were struck by the elements of recognition contained in the December speech. This speech, however, was not only about recognition. It also proposed an articulate vision of federalism, anchored in a respect for the division of powers and for provincial autonomy. This additional dimension was critical, in my opinion, to give content and credibility to Stephen Harper's gestures of recognition. More importantly, it

connected his new vision to the dual understanding of Canada that has long prevailed in Quebec.

Put simply, a majority of Quebecers thinks that their provincial government should seek both recognition, as the government of a nation within Canada, and autonomy — as a partly sovereign state within the Canadian federation. The simultaneous pursuit of these two objectives is sometimes seen as contradictory and self-defeating. Those who privilege the formal equality of the provinces or give precedence to individual equality, for instance, tend to reject recognition, or to see it as working against autonomy, because they can only envision provincial autonomy as symmetric. On the other side, many in Quebec who emphasize national identity dismiss the federal perspective implicit in the quest for autonomy. The combination of the two objectives, however, defines a position strongly rooted in Quebec history and institutions, and built on debatable but not illogical foundations.

Stephen Harper appealed to an old and well-established vision of Canada. In *The French-Canadian Idea of Confederation*, historian Arthur Silver showed how, from the beginning, French Canadians thought of “themselves as a nation and of Lower Canada as their country,” and sought to create an association within Canada that would allow them to strengthen this nation and keep it as autonomous and as sovereign as possible. The new federation would enable the provinces to work together on common projects, but it would also respect national identities inherited from the past.<sup>8</sup> The province of Quebec would be both an autonomous province within Canada and a distinct nation.

Henri Bourassa later formalized this dual purpose by interpreting the *British North America Act* of 1867 as a double pact, one between autonomous provinces and one between two founding nations. Bourassa affirmed the dual character of the federation to stress in particular the binational nature of Canada, in a context where a single focus on provincial autonomy risked legitimizing the oppression of French Canadians outside Quebec. Bourassa’s thesis, however, had a more general relevance, because it defined Canada as a pact with two complementary dimensions, one federal and the other binational. This double pact could not be found in historical documents or in law, and it was probably not what the fathers of Confederation had in mind when they crafted a constitution that very imperfectly reflected this idea.<sup>9</sup> This representation nevertheless became the dominant conception in Quebec. The adoption of the *British North America Act* was seen as the embodiment of a “partnership between peoples” and, at the same time, as the foundation for provincial governments that would be autonomous institutional frameworks within a decentralized federation.<sup>10</sup>

Guided by this understanding, the Quebec government has always sought both recognition and autonomy within the Canadian federation, emphasizing one or the other according to the circumstances. Until the 1960s, expectations and demands tended to be modest. Inspired by the conservative notion of “survival” and by a general distrust of state intervention, demands for recognition and autonomy were largely defensive, and sometimes contradictory. They could

be found, nevertheless, in the postwar debates over social policy and over the division of income and corporate taxes, as well as in the discourse of the Tremblay Commission. With the Quiet Revolution and the transformation of Quebec's state and society that followed, demands for recognition and autonomy became more ambitious. There is no point, here, in retracing a well-known history.<sup>11</sup> Suffice it to say that, from the debates on "contracting-out" social programs in the early 1960s to the current discussions on fiscal imbalance, the Quebec government has consistently promoted the two objectives, sometimes acting more as an autonomous province able to make common cause with other provinces, sometimes as a national state seeking recognition from the multiple representatives of another nation. Very often, the two stances co-existed and enriched each other. The pension plan debates of 1964, the Gang of Eight constitutional alliance of 1981, the 1987 Meech Lake consensus, and the 1998 Saskatoon agreement on the social union all saw the Quebec government fruitfully combine both purposes.

The evocation of past constitutional debates may not sound reassuring for the fate of open federalism. If the aim is to develop and implement a new vision for the federation, however, there is no escape from learning from the past. The lessons are not consistently negative. First, there were successes as well as failures in this long history of intergovernmental debates and negotiations. No satisfying resolution was reached on the broader constitutional or quasi-constitutional questions, but collaboration often worked, among provinces and between orders of governments. Second, the spirit of these exchanges usually was not one of stubbornness, blackmail, begging, or ever-increasing demands. Reasonable deliberation, compromise, and good faith negotiations were most of the time in evidence. Third, although difficult to satisfy, the Quebec government did not act capriciously. Beyond partisan affiliations and contextual factors, it followed a rather constant line of action, defined by its double quest for recognition and autonomy.

My aim is not to replace the predominant view of intergovernmental relations as mired in conflicts and stuck in a suboptimal equilibrium with a rosy picture of good faith collaboration and success. I have written critical accounts of federal-provincial relations in Canada.<sup>12</sup> The point is to recognize the principled character of the process, which is not just a power game.<sup>13</sup> Once this is done, the foundations upon which open federalism may be built can become apparent and plausible.

To sum up, this first section asked why open federalism worked with Quebecers, helping to convince about one in four to vote for the Conservative Party and moving many more to give the new government a chance, without expecting miracles. The answer, in a nutshell, was that Harper's proposal for open federalism fitted rather well with Quebecers' historical understanding of Canada as a double pact. The notion of a double pact has vanished from public discourse, but the reading of the country it offered has remained, because it was institutionalized in the Quebec government's quest for autonomy and recognition within the Canadian federation. More, then, is at stake with open

federalism than respect and symbolic recognition. In turn, this implies that expectations, however modest, cannot be met solely with symbols. The task at hand is more demanding.

### ***How Can Open Federalism Work?***

Stephen Harper's discourse on open federalism touched upon the two main traditional intergovernmental objectives of the Quebec government: recognition and autonomy. In each case, the principle invoked was clear, but its policy implications remained allusive. On recognition, Harper mentioned primarily mechanisms to allow the Quebec government to participate in UNESCO activities. On autonomy, the key engagements were to initiate a process to address the current fiscal imbalance in the federation and to adopt a Charter of Open Federalism that would help circumscribe the use of the "spending power."

Consider, first, recognition. On 5 May 2006, Ottawa and Quebec reached an agreement to give the Quebec government a role in the Canadian delegation to UNESCO. As such, this was a positive development, especially given the rigidity of the previous government regarding Quebec's international representation. But it remained a limited and one-shot deal, on a matter that, for most Quebecers, was not a burning issue. To give meaning, and lasting power, to the recognition dimension of open federalism, the Harper government would have to go further and shift the course of Quebec-Canada relations in a consistent and durable way. This implies drawing the conclusion that follows logically from the acknowledgement that the Quebec government has special cultural and institutional responsibilities and that terms should be found to allow the province to reintegrate the Canadian constitutional family. The exact content of these terms is anything but clear, but there is no escaping some form of explicit recognition of the national character of Quebec society. To some, this may appear as a delicate, politically risky question. The mere mention of Quebec in the 2006 Speech from the Throne stirred hostile reactions among Ontario Liberals, and clearly there is a public in Canada for this type of reaction. Still, no government since the Mulroney years has been better placed to move the country ahead along the path of reconciliation.

The first step would be to find a new way of speaking about Quebec and Canada. In this respect, the language of nationhood appears hard to avoid. This is the language Quebecers use naturally, and it is also the language of Quebec institutions, starting with the National Assembly.<sup>14</sup> It is as well the language chosen by the Aboriginal peoples of Canada to represent themselves and to make sense of their place in the country, and it poses little problems in other diverse countries, including some that are not even federations, such as Spain and the United Kingdom (where the English understanding of the word nation does not pose an obstacle either). Even Liberal leadership candidates Michael Ignatieff and Stéphane Dion now speak of Quebec as a nation, apparently without difficulty. Canadian philosophers have gained worldwide recognition for their success in establishing the possibility of unity in demo-

cratic multinational federations. More than 15 years after the death of the Meech Lake agreement, the country may be ready if not for a full discussion, at least for a new way of naming ourselves.

Another option would be to employ indirect terms such as distinct society. Many of these terms, however, have already been used and they raise more or less the same difficulties as the language of nationhood. Giving content and significance to open federalism requires addressing the question of recognition in a clear and frank way. Mere allusions to “special cultural and institutional responsibilities” will prove difficult to sustain over time, and they have little potential if the aim is to open the possibility of integrating Quebec within the Canadian constitutional family. The cabinet meeting held in Quebec on 23 June 2006 failed to achieve its public relations purpose precisely because the prime minister stumbled upon the national question. If Stephen Harper had just used the word, the event would have been a success and his idea of open federalism would have acquired some substance.

On the second objective, autonomy, the policy implications are more numerous and intricate, but not less difficult. Three files stand out: vertical fiscal imbalance, horizontal fiscal imbalance, and the use of the spending power.

Regarding vertical fiscal imbalance, the Harper government has recognized the existence of the problem and made a commitment to work with the provinces to find a solution. It would have been difficult, and unwise, to make a more specific commitment at the outset, given that two reports on the question were expected, one from the Council of the Federation’s Advisory Panel on Fiscal Imbalance, and the other from the federal Expert Panel on Equalization and Territorial Formula Financing.

These two reports have now been released, along with the government’s own statement on “fiscal balance,” presented with the budget on 2 May 2006.<sup>15</sup> The advisory panel of the Council of the Federation defines some common ground for the provinces and the territories, even though there is no consensus on the solutions proposed. Ontario in particular is dissatisfied with the panel’s recommendations on equalization. Still, the different governments rally around the fiscal imbalance diagnostic and around the report’s call for more generous, stable and principled transfers. The same seems to be true for the report of the Expert Panel on Equalization and Territorial Formula Financing, which proposes a similar, albeit less generous, approach to equalization.

The government’s document on “fiscal balance,” however, appears ambiguous. First, contrary to Stephen Harper’s previous discourses, it does not talk explicitly of fiscal imbalance. Second, it remains rather vague on the approach privileged by the new government to restore fiscal balance, except in saying that the roles and responsibilities of the different governments should be clarified. Third, like the report from the Council of the Federation, it places more emphasis on improved transfers than on a new division of financial resources.

If, as was suggested in the Quebec speech, what is at stake is not merely budgets but the very spirit of the federation, a preference should be given to

solutions that redistribute revenues, as opposed to approaches based on improved transfers. In his classic work on federalism, British constitutionalist Kenneth C. Wheare explained that the autonomy principle inherent to federalism required, in fact as well as in law, that each order of government had “under its own independent control” the financial resources “sufficient to perform its exclusive functions.”<sup>16</sup> The 1956 report of Quebec’s Tremblay Commission affirmed the same idea, and so did the 2002 report of the Commission on Fiscal Imbalance. Fiscal imbalance is caused by the existence of an excessive fiscal gap between the two orders of government, and it can best be solved by a reduction of this gap. To do so, however, provincial governments also have to raise their revenues, something they may not all be willing to do, as is suggested by the provincial reactions to the different reports. At the very least, the federal government should keep this avenue open for discussion.

In his letter to the Chair of the Council of the Federation, Stephen Harper addressed as well the issue of horizontal imbalance by proposing a reform of the equalization program. In this case, the report of the expert panel is certainly the most important in setting the agenda. Like the report of the advisory panel of the Council of the Federation, it recognizes that the program is in a bad state. The 2004 “new framework for equalization” disconnected the total amount of equalization from the workings of an established formula, to make it a simple budgetary decision of the federal government, and it did not specify a rule for the distribution of provincial entitlements. Bilateral accords with various provinces further reduced the rationality of the program, at the risk of undermining its legitimacy, which has always been high, even in the contributing provinces. The expert panel proposes a principled solution, which would bring back a formula based on a simplified representative tax system, with a ten-province standard and the inclusion of almost all revenues except user fees and half of the revenues from natural resources. The panel tries to present this latter exception as a compromise between two contradictory principles, the first one stating that a province’s true fiscal capacity should be considered to establish equalization rights and the other suggesting that as the owner of a resource a government should also benefit from its exploitation. The experts admit, however, that in the end the partial inclusion of resource revenues is based on their “best judgement,” and informed as well by a preoccupation for the “bottom line.” Whatever the case, the approach proposed by the panel appears superior to that offered in the Conservative program, where all resource revenues were to be excluded. In this case, a solution may be easier to reach since the decision belongs primarily to Ottawa, which has the sole responsibility for the equalization program. But the results will shape intergovernmental relations, and they will give meaning and substance, or fail to do so, to the idea of open federalism.

Finally, the federal use of the spending power should be limited. In this respect, the Conservative Party’s commitment to seek the agreement of a majority of provinces before introducing new shared-cost programs, which is



reiterated in the 2006 budget, does not go far enough. This commitment is similar to the clause found in the 1999 SUFA, which the Quebec government does not approve. The possibility of opting out with compensation is made more explicit and open, but the scope of the commitment remains very limited. Whereas the SUFA concerns both shared-cost programs and block-funded programs, the position of the Conservative Party limits consultations and opting-out to shared-cost programs, which have become an endangered if not extinct species in the Canadian public policy environment. Placing barriers to prevent new shared-cost programs is unlikely to be very effective. This is a rule designed to fight a war that ended many years ago. Limiting the federal spending power as it is exercised today requires refraining from imposing conditions on block transfers and, more importantly, making a commitment to reduce direct spending and fiscal expenditures in areas of provincial jurisdiction. I am not sure such a commitment can be institutionalized in a “fool-proof” way. It could nevertheless be made and reaffirmed regularly, at budget time for instance. The strong statement included in the prime minister’s 20 April 2006 speech in Montreal was a step in this direction. Many federal policy orientations, however, point in the opposite direction, as is the case for instance with childcare.

Concrete actions can therefore be taken to implement open federalism. Some of them are symbolic, others entail opening up avenues for deliberation and negotiation, and a few require immediate federal actions. With respect to recognition, it would be possible to take one important step toward symbolic reconciliation simply by changing the way we name ourselves as Quebecers and Canadians. In principle, this is very easy to do. In practice, as we saw on 23 June 2006 it seems to be more challenging. Regarding autonomy, the core issues concern the distribution of resources within the federation. They call for a reallocation of tax fields or tax revenues between the two orders of government, a restoration and improvement of the equalization formula, and a credible commitment to limit the use of the spending power. On these questions, time must be given for deliberation and negotiation, but early policy decisions will test the coherence of the idea of open federalism.

### ***When Can Open Federalism Work?***

As a minority government, the Harper government does not have many years to implement open federalism. Federal elections will soon be on the horizon, and some provincial elections of significance are also coming. At the same time, it would be self-defeating to rush for solutions. A quick-fix approach would either antagonize a significant number of provincial governments or generate incoherent policies trying to satisfy all sides at the same time. The best approach is to govern as if time were available. This means adopting a principled stance, taking the time to listen, debate and convince, and keeping an eye on the horizon so as to develop long-run, sustainable solutions. Concretely, this implies moving more rapidly on discourse and process than on

policies and results. If efforts were made to recast the Quebec recognition question in a new frame of reference and to launch a well-accepted process on fiscal imbalance and on equalization, a few successful initiatives on the international representation of provinces and on the spending power could be significant.

What about the coming Quebec elections? It is natural for Stephen Harper to see his fate as closely tied to that of Jean Charest, who heads the main federalist party in Quebec and is also close ideologically to the Conservative Party. In this perspective, rapid realizations may appear desirable. Pressures for such results will certainly come from Quebec City. Two considerations, however, are worth keeping in mind. First, the Quebec objectives that I have associated with open federalism — recognition and autonomy — are not the objectives of a party, and not even the objectives of Quebec federalists. They have guided all Quebec governments, sovereignists and federalists alike, for more than 50 years. Seeking recognition and autonomy within the Canadian federation is something like the foreign policy of Quebec. It has staying power, no matter who governs. Second, Quebecers have been dissatisfied for a long time and at record levels with the current Liberal government. This does not mean that Jean Charest or his party cannot win again. It simply means that finding a quick solution may generate suspicion. Indeed, one of the reasons for this high level of dissatisfaction is the perception that the government lacks a sense of direction and governs by improvisation, without taking the time to listen and deliberate. As for the Parti Québécois, it probably cannot win the next election without softening its stance on the immediate pursuit of sovereignty. Following an electoral victory, a sovereignist government would thus have to join the existing intergovernmental process, and public expectations would not be very different from those outlined here.

### ***Conclusion***

It is hard to believe that francophone Quebecers care so much about a voice at UNESCO or even about the intricacies of fiscal federalism. What they see in open federalism is probably a new, more receptive attitude toward their traditional search for collective recognition and autonomy within the Canadian federation. This quest is anchored in history and institutionalized in Quebec public policies; it is internally coherent but also compatible with the workings of a modern multinational federation; and it constitutes a set of expectations that is modest and easy to satisfy in principle, but also ambitious and difficult to realize in practice.

When he used the title of Serge Reggiani's song, "Il suffisait de presque rien," Vincent Marissal probably remembered the title but not the song itself. This is indeed a sad song. It tells the story of an older man's impossible love for a younger woman. Finding himself too old for this woman, who loves him and does not care about his age, the man concludes that the gap between them simply cannot be bridged, and he sadly deplores that so little, ten years less,

would have made their story possible. “Il suffisait de presque rien,” sings Reggiani, “pourtant personne tu le sais bien, ne repasse par sa jeunesse.”

Many have concluded likewise that this country cannot go back to its youth, and that, however narrow, the gap between Quebec and the rest of Canada cannot be bridged. The path toward reconciliation is indeed long and narrow. At the same time, public opinion on both sides seems receptive, and demands appear moderate. In the short run, three steps could be taken to foster accommodation. First, the federal government could openly recognize the multinational character of the country, and speak of Quebec as a nation. Recognition is the most enduring issue of Canadian debates, it has been acknowledged in the past, almost successfully, and it can best be addressed frankly and openly. If this is all there were to open federalism, it would already be significant. Second, a process must be initiated to deliberate and negotiate openly on vertical and horizontal fiscal imbalance. The possibility of reallocating revenues between the two orders of government and the restoration of the equalization program should be considered seriously, in a multilateral fashion and with a view for long-term sustainability. The reports of the two expert panels provide useful background for such a process and could help enrich the rather thin budgetary statement of the Harper government. Third, policy initiatives could demonstrate the immediate relevance of open federalism, regarding the international representation of provincial governments and the use of the federal spending power in particular.

On all sides, expectations remain modest, and not much needs to be accomplished within the next two years. What matters most is consistency and vision, the adoption of decisions and actions that indicate a clear sense of direction and make further change plausible and appealing. In Quebec, almost half the population remains favourable to sovereignty. This will not change rapidly, but a large proportion of sovereignists could find positive a course of action that indicates a willingness to bring recognition and foster autonomy. Progress on these two fronts could reduce as well dissatisfaction on other policy issues, where the preferences of Quebecers tend to differ from those of the Conservative Party (on crime control, social programs, or foreign affairs, for instance). Outside Quebec, there may be resistance to such an orientation, but a Conservative government faced with a Liberal opposition that needs to rebuild its party in Quebec is probably able to make progress along these lines. If open federalism is to have meaning as a new approach, it must indeed disturb established patterns of thought, and create new avenues for sharing and reconciliation in the country.

## *Notes*

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