

SOLUTIONS TO THE FUTURE OF CANADA AND QUÉBEC AFTER THE OCTOBER 26TH REFERENDUM: GENUINE SOVEREIGNTIES WITHIN A NOVEL UNION

Daniel Turp

INTRODUCTION

Although there have been attempts to downplay the result of the referendum, the overwhelming and overarching "No vote" is of great significance for the future of Canada and Québec. More than ever before, it puts into question the very possibility of constitutional reform in Canada. It should be noted that the Fall referendum was the first occasion on which the people of Canada were directly involved in a decision relating to the political status and future of Canada as a whole. Yet, at this first and unique participation in nation-building, which, furthermore, evolved around an Accord that had been achieved through consensus by all governments of Canada and was presented as the best compromise possible for the nature and structure of the Canadian polity, the people of Canada and Québec clearly rejected this compromise, thereby expressing very divergent views on the future of the Canadian federation.

From a Québec perspective, it would not be erroneous to interpret the content of the Charlottetown Accord and the result of the October 26th referendum as a refusal to further decentralise the Canadian federation, as well as a rebuttal to Québec's traditional claim to additional powers to determine its own political, economic, social and cultural future. The content of the Accord revealed little concern for this claim. It did not even meet with the limited expectations of several promoters of federalism in Québec, proving once again the inability of the Canadian people to accept a model of federation that would concede to the people of Québec additional powers, powers that it has repeatedly sought through the past thirty years of constitutional negotiations.

Although the proposed amendments to the division of powers appeared insufficient to a major constituency in Québec, those amendments were rejected by Canadians at the ballot box as giving too much to Québec. The amendments were seen as inconsistent with the respective role of the federal and provincial authorities in the governing of Canada. Quebecers rejected the Charlottetown Accord because the issue of division of powers had not been settled in a satisfactory manner. Many other motives underly the "No vote" of Canadians and Quebecers, but this interpretation for rejection by Canada and Québec is heavily supported by polls conducted after the 26th of October and cannot easily be discounted.¹

This episode in the political and constitutional history of Québec and Canada reveals again a struggle to reconcile irreconcilable visions of the federation. On the one hand, the contemporary struggle for more autonomy for Québec has met a subtle yet decisive disapproval on the part of Canadians. On the other hand,

Canada's will to give a national agenda to the federation in all fields of human endeavour has been impeded by Québec's unwillingness to concede any significant additional powers to the central authorities of the federation in the economic, social and cultural fields. These irreconcilable visions of Canada were entrenched in the Charlottetown Accord and that explains in great part why success in accommodation was more apparent than real, and why the Accord was rejected by the people of Canada and Québec.

Despite numerous calls for constitutional moratoria, the demise of the Charlottetown Accord will not prevent new initiatives towards constitutional reform, new attempts to "save" Canada and prevent Québec from achieving statehood. Many will promote the preservation of Canada's unity and uniqueness and reiterate the need for maintaining Canada's political independence and territorial integrity. As Canadian and Québec elections approach, some political leaders and parties will be given the opportunity to put forward new constitutional proposals. These leaders might well acquire the legitimacy required to initiate new constitutional talks.

It is nevertheless the belief of many, particularly in Québec, that new attempts at constitutional reform will lead to another failure and prevent both Canada and Québec from carrying on the challenging role of providing their people with good government. This belief will likely be reflected in the results of the next federal and Québec elections where a very significant number of promoters of sovereignty for Québec will be elected. Indeed, the new Québec leadership will, in all likelihood, initiate a process which will not be aimed at constitutional renewal, but will be focused both on the achievement of sovereignty for Québec and on the building of a very novel union between Canada and Québec.

GENUINE SOVEREIGNTIES FOR QUÉBEC AND CANADA

There is a growing consensus in Québec that sovereignty is a legitimate goal for the Québec people and that its achievement will be yet another step in its quest for self-determination. Yet it should be made clear that sovereignty for Québec does not equal a greater degree of autonomy for Québec within Canada, but rather a new international status for both Québec and Canada that entails the emergence of two sovereign states.

In this respect, the ambiguities that have been sustained in the past two years, principally by Québec's Premier Robert Bourassa, should be clarified and give rise to a more rigorous and honest presentation of the desired status of Québec. The references to the

notion of "shared sovereignty" and to the evolving experience of the European community as well as to the formulation of the infamous "Brussels question" by Premier Bourassa,² have contributed to great confusion and should no longer be instruments used by political leaders to mask their real intent with regards to the status of Québec and the nature of its relationship with Canada.

Although Premier Bourassa and his Liberal Party have clearly set aside their sovereignist platform and are less likely to resort to the vocabulary used before the October 26th referendum, it is not unlikely that they will make reference to the same ambiguities in order to attract the vote of Quebecers during the next Québec election. Again, this would constitute a refusal to define in clear terms what they really mean by sovereignty. It is also to be hoped that the Network of Liberal Dissidents, chaired by the former president of the Liberal Party's Constitutional Commission (Jean Allaire), will put forward some formula that makes clear the future status of Québec and avoids the confusion of their former party.

The leader of the Parti Québécois, Jacques Parizeau, shares this problem of clarity and should avoid statements that give rise to conflicting interpretations of the nature of Québec's sovereign status. Comments by Parizeau on the maintenance of Canadian citizenship and passports for Quebecers, as well affirmations on the use of the Canadian currency by Québec, however legally accurate they may be,³ have nurtured confusion and should not be presented in contexts that give rise to diverging interpretations on the desired status for Québec.

In fact, what is needed for Québec and Canada are genuine sovereignties, sovereignties that are clearly rooted in international law, making them two sovereign and equal states. A status that falls short of international sovereign status, and which would be at the very outset a *sui generis* formula of coexistence within a same body politic, could be even more confusing than the existing federal order (which at times seems very complex). The emergence of a sovereign State of Québec and the continued existence of the sovereign Canadian State would dissipate confusion within the international community and allow Québec to become a full-fledged member of that community, and Canada to maintain its current status.

The unambiguous status of Québec and Canada as legally sovereign entities would also permit the negotiation, between them, of a relationship that would stem from the common will of two sovereign states to achieve together a novel union.

A NOVEL UNION OF CANADA AND QUÉBEC

The historical, economic and political ties that have been woven by Canada and Québec in the past centuries have led promoters of Québec sovereignty to seek to establish a mutually beneficial association with Canada. As early as 1968, the most prominent leader of the sovereignty movement in Québec, René Lévesque, invited Quebecers to opt for sovereignty-association and thus to maintain close association with Canada. The 1980 referendum tied this idea of sovereignty with association and the government of the Parti Québécois then sought a mandate to negotiate a

new deal that would have created close links between a sovereign Québec and Canada.

After the long parenthesis on the issue on sovereignty, which closed with the rejection of the Meech Lake Accord, the question of the relationship with Canada rose again, in parallel with the renewed debate on sovereignty. Hence, while a great majority of Quebecers argued in favor of sovereignty before the Bélanger-Campeau Commission, they also clearly stated that Québec should seek an association with the rest of Canada. Moreover, the Bélanger-Commission and the Commission on Matters Relating to the Accession of Québec to Sovereignty analysed in depth the legal and economic aspects of Québec's re-association with Canada.⁴

The recurring debate on the Canada-Québec relationship appears to be caused not only by the will of Quebecers to prevent economic instability and to permit an orderly transition, but also by the idea that Canadians and Quebecers should, albeit in a different format, share in their future. Although this is not acknowledged in a very public manner by either party, Canadians appear to share similar views and are willing to maintain an association with a sovereign Québec.

It should not be surprising therefore that proposals for a novel union with Canada could gain momentum in the forthcoming months. These proposals will certainly focus on the economic dimension of a union between Canada and a sovereign Québec. Proposals to preserve and improve the economic union will certainly be formulated, although some groups will prefer looser forms of economic association with Canada, be it a free-trade zone, a custom's union or a common market.

All these diverse forms of economic association will entail a certain degree of freedom of movement of goods, services, capital and persons and will render necessary the adoption of measures to translate these freedoms into legal norms and to permit the creation of implementation mechanisms. Here, promoters of a continued association between Canada and Québec will have to devise mechanisms to allow for sound management of the association. Some will prefer the creation of administrative and intergovernmental mechanisms and will argue that to have their supervision measures adopted by national authorities (Parliaments and governments) will suffice. Others will champion political and parliamentary institutions to manage the association and will seek distinct powers for these institutions, relinquished by the two new sovereign states.

A very stimulating debate will occur within political parties and groups interested in the future of Québec on these different issues. The debate will likely focus on the ability of administrative and intergovernmental mechanisms to manage efficiently a closer economic union. Discussions on the need to create common institutions will stem from this debate and will also bring to light, as is still the case in the European Community, the democratic legitimacy of members of common institutions. This in turn will bring about heated debates on the need for an elected Parliament and the problems of representation, modes of decisions and votes in all common institutions, including a common Canada-Québec Parliament.

It is my belief that the political leadership in Québec will meet the challenge and will present to Quebecers and offer to Canadians a novel form of union. These proposals will certainly endeavour to maintain a mutually beneficial economic association, but will also go a step further to pursue the common destiny of the peoples of Québec and Canada. This common destiny could certainly be implemented by a union which could have an international identity in its own right. This union would have not only an economic mandate, but also a mission to assist the new sovereign countries in their goals of promoting rights of minorities, of managing the special relationship of the Canadian and Québec peoples with the Aboriginal peoples, and to accompany (and represent at times) Canada and Québec in international organisations and conferences. Such a union could be based on a common union citizenship that would superimpose itself on the Canadian and Québec nationalities and that would make the union not only an institution for its member countries, but also for its citizens.

* * *

It is time to acknowledge the irreconcilable views of the nature and structure of their federation held by Quebecers and Canadians. It is time to reconcile Canada and Québec in a novel union of genuine sovereign states that will foster the possibility of going beyond the very unsuitable and inappropriate federal structure that has bound the peoples of Canada and Québec for the past 125 years.⁵ The challenges which will then face Quebecers and Canadians will be nation-building, affirming and consolidating the unique personalities of their two countries, and union-building, promoting and defining their common destiny within their novel body politic and also within the international community. These new challenges will replace the old divisions and allow both Canada

and Québec, their nationals and common citizens, to play a significant role in the next century.

Daniel Turp, Professor, Faculty of Law, Université de Montréal, Visiting Professor, Faculty of Law, University of Alberta.

1. See R. Laver, B. Wallace and M. Nemeth, "The Meaning of No: A Maclean's/Decima Poll Looks at Reasons Behind the No-vote and what Canadians Expect Will Happen Next" *Maclean's* (2 November 1992) at 166 and accompanying footnotes. Among the reasons given by Canadians outside Quebec for voting No, the fact that Quebec got too much came first (27%) and the fact that provinces should not be given more power came third (15%). In Quebec, 44% of those who voted No said they did so because their province failed to get enough concessions from Canada.

2. The question that was put forward by Premier Bourassa in Brussels, on the occasion of his visit to the European Communities headquarters, was as follows: Do you agree to replace the existing constitutional order by two sovereign states associated in an economic union, responsible to a Parliament elected by universal suffrage? For a comment on the formulation of this question, see D. Turp, "Au Québec comme en Tchécoslovaquie? De la révolution tranquille à la partition tranquille: l'intérêt supérieur de rassembler les Québécois" *Le Devoir* (8 July 1992) at 13.

3. On the legal accuracy of Parizeau's comments on issues of citizenship and passport, see D. Turp, "Citoyenneté canadienne, citoyenneté québécoise et citoyenneté commune selon le modèle de l'Union européenne" in W. Kaplan, ed., *Belonging: Essays on the Meaning and Future of Canadian Citizenship* (Toronto and Montreal: McGill-Queens University Press, 1992) at 164-177. On this issue of the use of the Canadian currency by a sovereign Québec, see C. Gendron and D. Desjardins, "Le dollar canadien et un Québec souverain: certains aspects juridiques" in Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté, *Les implications de la mise en oeuvre de la souveraineté, les aspects économiques et les finances publiques (deuxième partie), Exposés et études*, vol.4, at 335-369.

4. For a synthesis of the findings of the latter Commission on these aspects, see Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, *Draft Report* (16 September 1992) at 84-178.

5. For a similar conclusion, see the recently published article of G. Marchildon and E. Maxwell, "Quebec's Right of Secession Under Canadian and International Law" (1992) 32 *Virginia Journal of International Law* 583 at 623.

The Centre for Constitutional Studies
of the University of Alberta
invites you to attend the fifth annual

McDonald Constitutional Lecture

THE CRISIS OF MULTI-NATIONAL FEDERATIONS: POST-CHARLOTTETOWN REFLECTIONS

delivered by

Philip Resnick
Department of Political Science
University of British Columbia

Thursday, March 22, 1993
8:00 p.m.
237 Law Centre