

QUÉBEC AND ENGLISH CANADA: THE POLITICS OF TERRITORY

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English Canadian threats to the territorial integrity of a future sovereign Québec were rare in the past, perhaps reflecting English Canadian confidence that the Québécois would never finally make the fateful decision to withdraw from the federation. During the 1970s, and even during the heated sovereignty referendum campaign in 1980, suggestions that a sovereign Québec would not be permitted to enjoy its existing territory tended to come only from hostile, francophobe fringe elements in English Canada. Incumbent politicians and other central actors in the debate on sovereignty among English Canadians rarely addressed the issue, at least not centrally. Perhaps the view shared in prominent English Canadian political and academic circles was that such talk would either be viewed in Québec as provocative and threatening, or be viewed in English Canada as going too far in accepting the imminent, real possibility of a sovereign Québec. In both cases, the perception was that challenges to Québec's post-sovereignty territory would perhaps serve to either negatively or positively encourage the Québécois to choose the independence option.

Lévesque's 1979 white paper on sovereignty-association, *Québec-Canada: A New Deal*, devoted only two very short paragraphs to the territorial issue in the 109 page English-language version of the document, one of which was key:

Québec has an inalienable right over its territory, recognized even in the present Constitution, which states that the territory of a province cannot be modified without the consent of that province. Moreover, since the agreements were reached on James Bay,

there no longer is any lien on any part of the Québec territory. In becoming sovereign, Québec, as is the rule in international law, will thus maintain its territorial integrity.

The current program of the Parti Québécois, translated into English and published by Lorimer in 1994, found it necessary to devote almost two full pages of the 65 page document to the territorial question in order to make some essential points:

...[B]efore Québec becomes sovereign, under the provisions of the Canadian constitution, its borders cannot be changed without its consent. After it becomes sovereign, the framework for questions of its territorial integrity will be international law. Thus, when Québec becomes sovereign, its borders will be the borders of the current province of Québec.

The document goes on to make some constitutional arguments about why the lands transferred to Québec by federal statute in 1898 and 1912 — the northern territories beyond the Height of Land, taking the province's borders to Hudson and Ungava Bays and the Hudson Strait — would remain "an unrestricted and integral part of Québec" after sovereignty. Finally, the document asserts that the orderly surrender of Aboriginal title in northern Québec was legally effected by the 1975 James Bay Agreement. These confident constitutional assertions rest on the opinion of an unnamed "panel of five international experts" and "the work of the National Assembly's committee on questions relating to sovereignty," a

clear reference to the 1992 report of the Bélanger-Campeau Commission.

Personally, I find the Québec sovereignists' constitutional arguments on the territorial question reasonable and persuasive, though I do remain uncertain about whether Québec's move to sovereignty might not morally, if not legally and constitutionally, at least partly re-open the question of the allegedly full surrender of Aboriginal title in northern Québec. But then I am neither a legal nor a constitutional expert, and constitutions being constitutions, laws being laws, and lawyers being lawyers, I have no doubt that there could be reasonably strong and compelling arguments to be made by all sides of the territory question. The PQ appears aware of that and by citing "international law" and by further asserting after sovereignty "the framework for questions of its [Québec's] territorial integrity will be international law," the PQ has presumably made a commitment to submit such questions to arbitration by the World Court and to abide by the outcome. Thus the PQ is offering the means for the orderly and peaceful resolution of all territorial conflicts which might emerge in a transition to sovereignty. Those in English Canada, and those among the Aboriginal nations who dispute a sovereign Québec's territorial claims, have yet to make a similar commitment, a potentially ominous portent for the future.

English Canadians have yet to awaken to the profound significance of the unprecedented turning point political relations between English Canada and Québec have reached. For the first time in history, as a result of the 1993 election, a clear majority of Québec's seats in the House of Commons are occupied by a party committed to Québec sovereignty (54 of 75 seats). As a result of the PQ victory in the September 12, 1994 election, the people of Québec are democratically represented in both the House of Commons and the Québec National Assembly by separatist parties. In terms of international law, political morality, and any conceivable theory of democracy, relations between English Canada and Québec are in a very different situation than in the past when the people of Québec elected a separatist party to speak for them in the National Assembly and a federalist party to speak for them in the House of Commons — thus both separatist and federalist politicians from Québec could justly claim to represent the people of Québec. If a clear majority of those elected to represent the people of Québec — both in Québec City and in Ottawa — are committed to sovereignty and a referendum affirms that option, then a refusal by English Canada to negotiate all

issues, but most particularly explosive territorial issues, would find little support among the international community.

This unprecedented political situation is re-enforced by an equally unprecedented economic situation in Québec. Significant elements of the business lobby in Québec stand in favor for sovereignty, expressing a conviction that they see their future as importantly tied to a sovereign Québec in a free-trade world unencumbered by a declining English Canada. The potential political significance of this should not be underestimated. The Québec business lobby, especially the large corporate and financial sector, spoke with one voice against sovereignty throughout the 1960s and 1970s, echoing the English-Canadian business lobby, and played a key role in the economic fear campaign that helped defeat the 1980 referendum. Now it appears that the economic fear trump card — which failed so woefully during the Charlottetown referendum — will be less likely of a success in a future referendum in Québec. At the very least, the voice of the business lobby in Québec will be deeply divided.

A future referendum on sovereignty in Québec could, therefore, easily have a very different outcome than that of 1980. The balance of political forces could be dramatically weighted in favour of sovereignty — a PQ government in Québec City, a strong majority of Québec's federal MPs campaigning in favour of a "Yes," and large and influential elements of the business lobby now on the "Yes" side. Additionally, there is the already existing, very strong popular support for sovereignty which gave 40 per cent to the "Yes" side in 1980, hardly an insignificant outcome when the balance of political forces was so clearly in favour of federalism.

In this context, English Canadian reticence to express a willingness to seek international arbitration and to abide by the rule of international law regarding territorial matters is at least worrisome. Is there an unspoken agenda to keep options like territorial provocation and military intervention open? Or is it just an understandable reluctance to appear to give aid and comfort to the separatists by beginning to set the terms for sovereignty negotiations as if a referendum might pass? Perhaps. But given the role territory has played in the history of world and regional conflict — and the dirty tricks often employed in order to provoke territorial confrontations in order to justify already well-prepared military action — one should not be naïve. And given

the frequency with which English Canada has used military power in the struggle with Québécois nationalism in the past, one might be forgiven for harbouring a fear that English-Canadian military action — notwithstanding a democratic expression of the will of the people of Québec — is not beyond the realm of possibility in the minds of some in English Canada in the event that sovereignty wins the hearts and minds of a majority of Québécois.

Since the collapse of Meech we have become dreadfully familiar with the dangerous nonsense emanating from English-Canadian extremists, like the right-wing Alliance for the Preservation of English in Canada and many in the closely associated Reform party, who talk loosely of the use of military action to support the establishment of non-francophone ethnic enclaves in Montreal West and the north, to force a territorial corridor through a sovereign Québec to link Ontario and Atlantic Canada, and even to suppress any general move to sovereignty as treason. Even the careful Preston Manning, speaking to a U.S. audience, alluded to the possibility of civil war as a means of finally resolving the English/French conflict. When one adds to this political mix some of the recent comments by leading political figures in English Canada, one's anxiety seems more justified. And some of these comments have touched on the sensitive issue of territory.

Federal Indian Affairs Minister Ron Irwin's comments in May, 1994 caused the biggest stir when he informed a meeting of Aboriginal leaders in Québec that they could choose to remain in Canada if Québec opted for sovereignty. The minister was promptly but not very publicly rebuked and reassurances were provided that his comments did not represent a change in the Chrétien government's "hands-off" approach to the debate in Québec. Some constitutional experts reminded the minister and his government that if he supported the right of Aboriginal nations to secede from a separating Québec then surely the same principle applied to Aboriginal nations across English Canada. Just as the Irwin storm was abating, Premiers Romanow of Saskatchewan and Harcourt of B.C. chose to become belligerent and provocative. Besides throwing a series of personal insults at Bouchard and Parizeau, Romanow mused that even if Québec voted for sovereignty there was just no legal or constitutional way it could leave the federation. Harcourt went further, declaring that if Québec "decided to separate ... we'd be the worst of enemies," there would be a

"nasty split," and the people of Québec would "suffer in every which way." Furthermore, Harcourt declared that a separating Québec couldn't be assured that its borders would remain intact.

The reaction in Québec to these comments was as predictable as it was instantaneous and unanimous. PQ leader Parizeau reiterated his 1991 position that Québec's borders "are what they are ... there's no way the federal government will say ... we are going to carve out pieces of you. Nobody does that in a country where the rule of law applies." BQ leader Bouchard was blunt, declaring that any attempt to redraw a sovereign Québec's borders would unite all francophones: "If there is one thing sacred in Québec, as in any other country, it is territory ... Even Robert Bourassa would get angry." And finally, eloquent confirmation was provided by Québec Premier Daniel Johnson's solemn declaration in the National Assembly: "We will defend Québec's territory no matter what happens."

It is therefore important to assess the political impacts and consequences of English Canada's threatening posturing on a sovereign Québec's territory. In English Canada the effects are clear to me. For those, like myself, who wish to see an orderly and peaceful resolution of the Québec question, and who are willing to contemplate both special status and Québec's right to secession, such bellicose talk provokes dismay and, frankly, fear of the future. For those hostile to Québec, however, such belligerent talk stiffens their resolve to be uncompromising and lends legitimacy to their anti-Québec anger and hostility. In Québec, such talk gives aid and comfort to the hard separatists and makes the task of pro-federalist Québeckers much more difficult. In a sense, then, belligerent talk in English Canada on the territorial question feeds the extremists on both sides — the Québec separatists who see separatism as the only viable option and the English Canadian hard-liners who will yield nothing to Québec on anything no matter what the outcome.

There are doubtless some in English Canada who might argue that a judicious amount of bellicose talk, including territorial threats, could be politically useful in the run up to the next sovereignty referendum. Such talk in English Canada might scare the soft separatist supporters among the Québécois into reconsideration before and during the referendum. (Such a simplistic view was common during the October Crisis in 1970 when the troops went in and

the mass arrests took place — this, some in English Canada said, was just the sort of reality therapy needed to deflect the people from support for separation). I can see how the unsophisticated might make such an argument, but I would suggest the historical record of English Canadian/Québécois relations demonstrates such an approach is finally counter-productive, serving only to exacerbate the fear and anger of those opposed to separation, to stiffen the resolve of those committed to separation, and to compel those in Québec who struggle to reconcile federalism and Québécois nationalism to walk an intolerable tightrope from which they inevitably fall. And after the referendum is over — indeed, after the PQ election victory — such talk becomes little more than civil war talk and can only lead to a deeper chasm between the two solitudes.

English-Canadian political leaders — and federalists in Québec — must carefully assess their choices with regard to the two most contentious issues of Québec's possible separation. First, the mechanism for separation should a referendum pass and the Québec government and the BQ MPs adhere firmly to such a course. Second, the territorial question. I will focus on the territorial question. English-Canadians and federalists in Québec, it seems to me, have three options as to how the territorial question might be addressed. The first and by far the best option would be to accept the PQ's olive branch and agree that contentious territorial issues will be resolved according to international law with the World Court as final arbiter should peaceful negotiations fail. Second, bellicose talk and territorial threats could be used as a political device in an effort to undermine support for separation in Québec, as well as, in the event of a successful referendum, a means to postpone and avoid negotiations in hopes that subsequent political events might change the dynamic — a subsequent provincial election, an intervening federal election, a dramatic constitutional offer from English Canada. Such a political strategy is very risky, but might work.

The final option is to seek a military resolution, that is, to ignore the democratic expression of the will of the Québécois — the election of the BQ to Ottawa, the election of the PQ in Québec City, the passing of a referendum — declare a state of emergency, suspend the Québec National Assembly, expel the BQ MPs from the House of Commons, and send in the troops. All these things could arguably be done quite legally and constitutionally under section 91 of the *Constitution Act*, 1867. If English Canada were to embark on this third option, then the political

manipulation of the territorial question could be key to establishing the political and civil turmoil necessary to justify such Draconian measures. By provoking, encouraging, and supporting resistance among the Aboriginal nations in Québec, up to and including armed uprisings and states of siege, such as that at Oka, Ottawa could establish a pretext for the invocation of section 91 and the insertion of federal troops. Similarly, by provoking, encouraging and supporting resistance among the English-Canadian and Allophone minorities in and around Montreal, including the establishment and declaration of enclaves and urgent appeals to Ottawa for assistance, Ottawa could again establish the grounds for military intervention and extreme political measures.

For those who believe that the third option is unthinkable, I urge you to re-examine the historical record regarding the provocation and suppression of the 1837-38 Rebellion in Lower Canada, the 1885 Riel Rebellion, the 1970 October Crisis, the betrayal of Lévesque by the English-Canadian premiers in 1981, and the insertion of a CSIS mole for years in the Lévesque cabinet. I am convinced that a detailed plan for "the third option" already exists, marked Top Secret, and sits in CSIS and Privy Council offices awaiting political decision in the event that Québec votes for sovereignty. To believe otherwise is to ignore the realities of the modern nation state. Such plans are there — the question for us as Canadians in a democracy is whether they will be implemented.

It is urgent that we in English Canada, as well as the federalist forces in Québec, clarify our strategy if for no other reason than to avoid being swept along by events, making irrational political decisions in the heat of crisis, manipulated by desperate or foolish political leaders. Our choices are really two and we should clarify them and — given that many believe we have already made the civilized choice — clearly re-affirm our preferred choice. The first choice is to declare that we seek a democratic and peaceful resolution of the issues which divide English Canada and Québec, that Québec is free to decide its constitutional future by democratic means, and that we in English Canada and the federalists in Québec will accept the outcome. Further, we must clearly declare that any conflicts, particularly territorial conflicts, will be resolved legally and peacefully through existing mechanisms of international legal arbitration. If this is our choice — as I think many Canadians believe it is — then we should say so and stick to it. And federal ministers, provincial premiers

and Preston Manning who believe otherwise should be firmly invited to avoid bellicose talk.

If, on the other hand, we in English Canada and federalists in Québec retain a willingness, unspoken or otherwise, to use force if the people of Québec opt for sovereignty, then surely we should debate this strategic choice and determine whether it is finally acceptable. Leaving aside the fact that military action would be an abomination against democratic and civilized political conduct, an abomination from which Canada would never recover regardless of the outcome, there is no guarantee that it would even be effective in the short term and might merely lead to Québec's disastrous and bloody exit from a Canada which would very soon disintegrate.

The saddest part of this whole impasse is that a resolution has always been within our grasp, but English-Canadians have never mounted sufficient political will and good faith to seize the many missed opportunities. For 30 years Québécois nationalism has made it clear that the choices before us were special status or separation. By repeatedly denying special status, English Canada has made separation the only option available to Québécois nationalists unwilling to accept federalism as it has evolved. Ironically, separation, if it occurs, will become a rather long and messy road to what in political effect will be a form of special status as a sovereign Québec and a sovereign English Canada conclude a whole series of agreements to achieve a workable political and economic association.

As we go through this next phase of crises around the Québec question, there will be considerable instability and uncertainty. Indeed, the PQ and BQ are currently blamed for threatening the Canadian economy as a result of their separatist project. Here I must beg to differ. The uncertainty and instability we are living through now is not the fault of the Québécois nationalists and their struggle for a sovereign Québec in association with English Canada. Rather — and I believe the last 30 years and more of our history confirms this — the blame for the uncertainty and instability can be laid clearly at the feet of English Canada and many of its current crop of political leaders. They are the ones engaging in threatening and bellicose talk, not the Québécois nationalists. They are the ones saying that there is no orderly way Québec can separate regardless of any referendum result. They are the ones threatening enclaves, corridors and annexation — all of which to

an international observer, wise to the ways of the world, is nothing more than a civil war in words that often precedes a civil war in action. If the Romanows and Harcourts and Mannings want to soothe the international business community, as they claim, all they have to do is say that whatever the Québécois choose, English Canada will honour; that there will be a speedy, orderly and peaceful transition to new political and economic arrangements should a referendum pass. End of uncertainty. End of instability. End of the largely manufactured crisis.

To be brutally frank, both as an English-Canadian and a student of our history and politics, I do not fully trust us to handle this in a reasonable and civilized way, and this fact, more than anything, makes me sad and fearful. □

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